

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7428

United States Court of Appeals

FOR THE SECOND CIRCUIT

DIVERSIFIED MORTGAGE INVESTORS,

Plaintiff-Appellee,

-against-

U.S. LIFE TITLE INSURANCE COMPANY
OF NEW YORK,

Defendant-Appellant.

*On Appeal From the United States District
Court For The Southern District Of New York*

A p p e n d i x

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A

DOCKET ENTRIES

5-22-75—Filed complaint and issued summons.

6-03-75—Filed summons with marshall's return served—U.S. Life by T. Burhhart on 5-29-75.

6-20-75—Filed stip. and order ext. deft time to answer to the complaint to 6-27-75.

6-25-74—Filed pltf. affdvt. and Order to Show Cause Ordered that deft. show cause why an order should not be issued ret. in Rm. 2804 on 7-1-75 personal service on 6-21-75—Weinfeld, J.

6-25-75—Filed pltf's memorandum in support of its application for injunction relief.

6-27-75—Filed deft. affdvt. and notice of motion for an order dismissing the complaint 7-1-75.

6-27-75—Filed deft's memorandum of law in support of motion to dismiss and in opposition to pltf's motion for a preliminary injunction.

6-30-75—Filed pltf's rebuttal affdvt. in support of application.

6-30-75—Filed pltf's memorandum in opposition to deft's motion to dismiss and in reply deft's answering affidavits.

7-03-75—Filed plaintiff's rejoinder.

7-16-75—Filed OPINION #42806 defts moved to dismiss, their controversy centers prior of mechanic liens filed against the property against pltf, Pltf contends because deft's failure to file and record required instruments in re, lien priority seeks, other relief, leave to settle the mechanics lien. The Court deems this equitable disposition which preserves the rights of the litigant as indicated, if pltf finally prevails and deft is held liable under policy. Ins., settlement of the mechanics lienors' claims at less than their claim amounts necessarily will inure to the benefit of the deft. deft's motion to dismiss the complaint and to stay this action is denied—Weinfeld, J.

B

7-16-75—Filed affdvt. deft. submitted with the permission of the Court so as to set forth the contention of U.S. Life Ins Co.

7-25-75—Filed notice of appeal that the deft appeals to the USCA for the Second Circuit the order of the Dist Court entered on 7-16-75 mail copies to Trubin, Sillocks, Edelman & Knapp.

OPINION

[TITLE]

Edward Weinfeld, D. J.

More than 1200 individual residential lot purchasers in a 1900 acre project are caught in the cross-fire of a controversy between plaintiff, which advanced substantial funds for the development of the property secured by a first mortgage, and defendant, which issued title insurance to plaintiff. Their controversy centers about (1) the priority of mechanic's liens filed against the property as against plaintiff's first mortgage, and (2) defendant's liability in the event the mechanic's lienors' asserted priority is sustained. The issue of priority is yet to be determined in a pending state Supreme Court mechanic's lien foreclosure action, wherein the instant defendant title insurance company, in representing plaintiff under the title insurance policy, is resisting the mechanic's lienors' claims.

Plaintiff in this declaratory judgment action contends that because of the defendant's failure to file and record required instruments on its behalf, the mechanic's liens have priority over its first mortgage. It seeks, among other relief, leave to settle the mechanic's lien claims without prejudice to its rights against the defendant, whose consent to settlement is required under the title insurance policy. The defendant has refused such consent based upon its contention that the mechanic's lienors are not entitled to priority. Upon argument this court suggested, pending a trial of this lawsuit, a disposition without prejudice to the rights of either party. The proposal was not accepted.

Obviously, the mechanic's liens, which remain of record

unless discharged, are a cloud upon title to the entire property. Their continued existence has prevented completion of the project and delivery of marketable title to existing purchasers. While the parties to this litigation are engaged in their controversy, work on the project has been halted. The 1200 innocent lot purchasers, some of whom have paid in full for their lots and most of whom have made substantial down payments, face irreparable injury unless development of the project is resumed. Plaintiff also is exposed to irreparable injury by the standstill situation resulting from the default of the developer and unsatisfied mechanic's liens.

The court is satisfied that the interests of the plaintiff and, more importantly, the lot purchasers can be protected without prejudice to the ultimate rights of the defendant. Under the circumstances the plaintiff, during the pendency of this action, is permitted to settle, bond, or otherwise dispose of the mechanic's liens so that they are discharged of record, but without prejudice to the rights of plaintiff and defendant in this or the state court action—particularly without prejudice to any right of disclaimer of liability which is or may become available to the defendant, other than a disclaimer based upon lack of consent to settlement of the liens.

The court deems this an equitable disposition which preserves the rights of the litigants and at the same time protects innocent third parties not involved in their controversy. Moreover, if plaintiff finally prevails and defendant is held liable under the policy of insurance, settlement of the mechanic's lienors' claims at less than their claimed amounts necessarily will inure to the benefit of the defendant.

The defendant's motion to dismiss the complaint and to stay this action is denied.

[Sgd] Edward Weinfeld
United States District Judge

Dated: New York, N.Y.
July 16, 1975

**ORDER TO SHOW CAUSE
FOR A PRELIMINARY INJUNCTION**

[TITLE]

Upon the affidavits of MARCO M. CUOMO, Secretary of State of New York, sworn to the 20th day of June, 1975 and BERNIE O. SNODDY, Managing Trustee of Plaintiff, sworn to the 19th day of June, 1975, and exhibits thereto annexed and upon the summons and complaint heretofore filed, it is

ORDERED that the above-named defendant show cause at a motion term of this Court at Room 2804, U.S. Courthouse, Foley Square in the City, County and State of New York on the 1st day of July, 1975 at 2:15 P.M. of that day, why and order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure:

- (a) Requiring the defendant, during the pendency of this action, to forthwith discharge all mechanic's liens dated subsequent to the date of plaintiff's mortgage and affecting the premises encumbered thereby; and
- (b) Alternatively, permitting plaintiff to settle such liens without prejudice to its rights under its policy of title insurance; and it is further

ORDERED that sufficient reason appearing therefore let personal service of a copy of this order, together with the supporting documents upon the defendant at 125 Maiden Lane, New York, New York, or upon its special counsel, Shaw & Levene at 770 Lexington Avenue, New York, New York, on or before June 25th, 1975 be deemed sufficient service.

[Sgd] Edward Weinfeld
United States District Judge

Dated: New York, N.Y.
June 24, 1975

AFFIDAVIT IN SUPPORT

[TITLE]

STATE OF NEW YORK)

COUNTY OF NEW YORK)

MARIO M. CUOMO, being duly sworn, deposes and says:

1. I am the Secretary of State of the State of New York and have read the complaint in this action. I make this affidavit in support of the motion of Plaintiff for resolution by way of preliminary injunction of certain of the demands made in the complaint.

2. The real property which is subject to this action is a 1900 acre two-phase land development project in Greene County, New York containing tennis courts, a clubhouse, an equestrian center, boating facilities, and the State's largest artificial lake. The project is known as Sleepy Hollow Lake. Pursuant to New York Real Property Law Section 337 et. seq., an Offering Statement was filed with my office by the developer, Sleepy Hollow Lake, Inc., effective December 12, 1973, permitting the sale of residential lots.

3. Approximately 1200 lot purchasers, most of whom are residents of New York State, entered into sales contracts for lots at Sleepy Hollow Lake. Some purchasers have paid in full for their lots; most have made down payments of several thousand dollars each and are pay the balance over ten years.

4. The project is approximately 80% complete, but significant portions of construction of the first phase of the project are more than a year late in completion as required by the Offering Statement. I have been advised that Sleepy

Hollow Lake, Inc. has defaulted on its loan, that no work has been performed since last spring, and that \$1,11,000 of mechanic liens have been filed against the property.

5. Because of the mechanics liens which have been filed and remain undischarged, deeds conveying marketable title cannot be delivered to lot purchasers, and further advances of funds necessary to complete work cannot be made by the Plaintiff mortgage lender without subordinating such funds to the mechanics liens.

6. As stated in complaint, a dispute exists between Plaintiff and Defendant over whether Defendant has an obligation under its title insurance policy to immediately bond or discharge existing mechanics liens, and over whether Plaintiff is entitled itself to defend mechanics lien claims and make settlements with mechanics lienors in order to permit prompt recommencement of work to complete the first phase of the project, without prejudice to its rights under its title insurance policy.

7. Discharge of mechanics liens is necessary before the project can be completed and lots delivered to purchasers. It is highly desirable and in the public interest for work on Sleepy Hollow Lake to recommence and be completed as soon as possible.

8. Because of the status of the project and the liens which have been filed, a trust has been imposed by my office upon installment payments made by lot purchasers under their contracts of sale. However, the funds in such trust will be insufficient to grant rescission payments to lot owners. Thus, if the project is not completed, purchasers will not be able to receive funds of millions of dollars of down payments which have been made.

10. If the work is not recommenced under circumstances assuring prompt completion, I may have no alternative to

petitioning for a receiver of the property pursuant to Real Property Law Section 339(c). Such action could result in protracted litigation, with a significant danger that contract purchasers would cease making payments and that the property would no longer be viable as a land sales project.

11. This would greatly damage Plaintiff, which has invested millions of dollars in financing the property based upon the value inherent in it as a land sales project.

12. In order to avoid irreparable injury to both lot purchasers and Plaintiff, it is imperative that determinations be made immediately, whether the Defendant title company is obligated at this time to discharge mechanics liens of record, and whether Plaintiff lender may defend the mechanics lien claims and make settlements with lienors at its own expense, without prejudice to its rights against Defendant under the title insurance policy.

[Sgd] Mario M. Cuomo

Sworn to before me this
20th day of June 1975.

[Sgd] Notary Public

PLAINTIFF'S AFFIDAVIT

[TITLE]

STATE OF FLORIDA)

COUNTY OF DADE)

BERNIE O. SNODDY, being duly sworn, deposes and says:

1. I am the Managing Trustee of the Plaintiff, Diversified Mortgage Investors ("DMI"), a publicly haled Massachusetts real estate investment trust, and am familiar with the complaint and the subject matter in the action. In this action DMI seeks a declaratory judgment against Defendant USLife Title Insurance Company of New York ("USLife") with respect to DMI's rights as an insured under its title policy, and the obligations of USLife to demand DMI in another pending action which has been brought against DMI by mechanic's lienors.

2. This affidavit is submitted in support of DMI's application for immediate injunctive relief pending the trial of this action, in order to avoid the imminent collapse of Sleepy Hollow Lake—a \$25,000,000 land development project in Greene County, New York; to prevent irretrievable loss of DMI's \$12,000,000 investment therein, and the effect this would have upon DMI; to prevent approximately 1200 families from losing millions of dollars they have deposited on home sites at Sleepy Hollow Lake, as hereafter more fully described; and to preserve the rights of DMI as an insured under its title policy from USLife.

3. During 1971, DMI made the \$12,00,000 mortgage loan described in the complaint (the "Loan") against the security of a first mortgage lien (the "Mortgage") upon property known as Sleepy Hollow Lake, which property was

filed as a land sales project with the New York Secretary of State. Sleepy Hollow Lake is designed to contain tennis courts, a clubhouse, an equestrian center, boating facilities, and New York State's largest artificial lake. DMI would not have made the Loan but for the anticipated greater value of the property if utilized as a land sales project, with a fully developed value expected to be in excess of \$25,000,000. The acquisition cost of the raw land was approximately \$2,871,000.

4. To insure the first lien property of advances under the Mortgage, DMI obtained title insurance from USLife, which was issued pursuant to letter agreement with USLife dated September 28, 1971 and insured under Policy No. A 66070 (collectively the "Policy"). The Policy specifically insured the priority of construction advances over liens, and obligated USLife to take all necessary steps to insure the continued first priority of DMI's Mortgage. A copy of relevant portions of the Policy is annexed hereto as Exhibit "A".

5. DMI employed USLife to file and record instruments as required by applicable New York law. In connection with the Loan, and on the advice of USLife, for the purpose of providing priority for construction loan advances, DMI and the Borrower executed a building loan agreement and same was forwarded to USLife for filing with the Clerk of Geene County.

6. In reliance upon the policy and the proper performance by USLife of its obligations to DMI, DMI advanced funds under the Loan. As of December 31, 1974, there was outstanding under the Loan in excess of \$7,100,000 and interest, no portion of which has been repaid to date, and on which interest continues to accrue at the rate of approximately \$60,000 a month. Work on the

project is approximately 80% complete.

7. Approximately 1,200 residential lots in the first phase of the development were sold to individual purchasers, the majority of whom are residents of New York State. Such contracts are non-recourse as to purchasers, whose maximum liability is forfeiture of down payments, meaning that the purchasers cannot be sued for the balance of monies due or for specific performance of their contracts.

8. The land sales Offering Statement required completion of most of the work for the first phase of the Project by March 24, 1974. The borrower, Sleepy Hollow Lake, Inc., failed to meet such completion date and defaulted on the Loan and its obligations under the Mortgage. Mechanics liens have been filed against the project totaling approximately \$1,811,000. The plight of Sleepy Hollow Lake is described in the October 19, 1974 New York Times article annexed hereto as Exhibit "B".

9. Certain of the mechanic's lienors have instituted a lien foreclosure proceeding in which priority is claimed over DMI's Mortgage specifically by reason of failure to file the building loan agreement of record. I have been advised by counsel that such filing is required by Section 22 of the New York Lien Law in order for construction loan advances to have priority over mechanic's liens.

10. A title search has confirmed that the building loan agreement is not of record. It is that act or failure to act on the part of the USLife that has given rise to the underlying action; and it is the injury being suffered by DMI resulting from such act that has created the need for this application. Upon information and belief USLife's failure to file the building loan agreement constitutes negligence and because of the failure of USLife to file the building loan agreement DMI is without legal defense to the claims

of mechanic's lienors to priority over advances made for construction under the Mortgage.

11. Because of this, DMI is unable to eliminate the mechanic's liens by foreclosure of the Mortgage, and additional funds cannot be advanced for completion of the Project at this time without subordination of such advances to mechanic's liens. Thus, the Project cannot be completed in fulfillment of obligations to individual lot purchasers so long as the liens remain unsatisfied. In addition, because of liens, lots contracted for cannot be conveyed with marketable title to individual purchasers as required by the Offering Statement filed with the New York Secretary of State.

12. Because of the default under the Loan, the filing of mechanic's liens, and receipt of numerous complaints from lot purchasers, the New York Secretary of State has declared a trust with respect to contract payments made by certain lot purchasers. Unless construction is promptly recommenced, the New York Secretary of State also has threatened to impose a receivership of the Project pursuant to Section 339(c) of the Real Property Law. In the event the Secretary of State imposes a receivership, years of litigation probably will ensue, and this inevitably will result in the project's ceasing to be viable as a land sales project.

13. In the event the mechanic's liens are not discharged so that construction can be quickly resumed, lot purchasers may cease making payments under their non-recourse contracts, also with the result that the project will become unviable as a land sales project. A number of lot purchasers already have ceased making payments. See, for example, Exhibit "C".

14. In either of the foregoing events, the interests of the Lenders in the project would be irreparably damaged, and

millions of dollars of down payments,

15. As a real estate investment trust, DMI has encountered difficulties in the existing economy, of which the Court is requested to take judicial notice. DMI has experienced severe liquidity problems and is dependent on its bank lines of credit for operating funds. DMI has found it necessary to create substantial loss reserves, and the equity of its shareholders has been reduced. DMI's lenders have restricted it in the making of investments. The financial condition of DMI and its outlook for the near future can best be described as extremely serious.

16. The inability to utilize the Sleepy Hollow Lake project for land sales purposes would drastically affect the value of such property and thus the value of the Loan to DMI. Were the project not to be carried forward for land sales purposes the land value could be reduced from in excess of \$25,000,000, on a fully developed basis, down to approximately \$1,200,000 which the property has recently been appraised at as raw land. In light of existing claims and mechanic's liens, this probably would require DMI to take a loss with respect to its entire investment in the project.

17. Taking such a loss could have a significant adverse impact on DMI, its relationship with its banks and shareholders, and its ability to operate. The importance of this project to DMI is evidenced by its willingness, notwithstanding the numerous defaults and problems, to make available additional funds for the purpose of completing work, preserving the project for land sales purposes, and ultimately recovering its investment.

18. The only hope for preservation of Sleepy Hollow Lake and the economic interests of all involved, including those approximately 1200 families who have invested their savings in homesites, is by immediate completion of the project. But until the mechanic's liens which stolidly sit in front of DMI's mortgage are removed and discharged by way of bonding, payment or settlement, completion of the project cannot adequately proceed.

19. DMI obtained title insurance from USLife for protection against the very situation which has arisen: the filing of mechanics liens creating a cloud of title and interference with performance of construction. The Policy imposes a relationship upon the parties which requires USLife to act in good faith in defending the interest of DMI and in restoring the priority of the Mortgage.

20. DMI has requested that USLife fulfill its obligations to defend DMI's interest by bonding or discharging all liens immediately. As shown in Exhibit "D" hereto, the response of USLife has been to insist upon its rights under the Policy to litigate with mechanics lienors their claims of priority over the Mortgage.

21. Under the circumstances, such litigation would serve only to introduce further harmful delay, and to maximize the judgment and interest payable to lienors. On information and belief, because of the failure of USLife to file the building and loan agreement, such litigation would be futile.

22. DMI has offered to use its own liabilities and resources to attempt to mitigate damages and remove the mechanic's liens by settling and making payments to mechanic's lienors as reasonably may be necessary. However, a boilerplate clause in the Policy prevents DMI from taking such action without the written consent of

USLife. As also shown in Exhibit "D", USLife has refused such consent and has advised DMI that the cost of any settlements made by DMI shall not be recoverable under the Policy.

23. Not only has USLife failed and refused to defend the interest of DMI in good faith by payment, bonding, settlement or other discharge of mechanic's liens, but USLife also has insisted upon defending the action with a reservation of liability. If its title insurance does not provide DMI with an unqualified defense in this vitally important matter, it should be permitted to defend its own interests, without prejudice to its rights under the Policy.

24. The indifference of USLife to this situation which affects not only DMI, but approximately 1200 members of the public; its failure to carry out its contractual obligations; and its callous disregard for its own negligent act, threaten DMI with unretrievable loss of its total investment at Sleepy Hollow and imminent disaster far in excess of the face amount of the \$5,000,000 policy. Such indifference is in stark contrast to the reputation for competence and experience which USLife holds out to the public in its advertising: "Smooth Sailing with an Experienced Crew." (See Exhibit "E" hereto.) It should be noted that DMI's potential claims against USLife for consequential damages in this action could exceed the entire capital, surplus and statutory premium reserves of USLife, as shown on Exhibit "F" hereto.

25. For the foregoing reasons, it is imperative that this court issue a preliminary injunction directing USLife to immediately bond or discharge all liens;

lien action, and to pursue such defense by making settlement with mechanic's lienors by payment of such sums as may be necessary, not exceeding the amount of liens filed and interests and costs due, without prejudice to its rights under the Policy.

26. Unless such a determination is given immediately, DMI will be irreparably damaged, in that if it goes forward and settles with mechanic's lienors on its own, it may forego the benefits of title insurance to which it is entitled pursuant to the terms of the Policy; and if it waits for the Defendant to futilely litigate the issue of the priority of the Mortgage with mechanic's lienors, such liability will be maximized, and in the interim the project will be in dire jeopardy for the reasons above set forth.

27. This application is being brought on by an Order to Show Cause because pressure from the Secretary of State as detailed herein, does not give us sufficient time to make a motion. No previous application for this relief has been requested in this Court or in any other Court of any other jurisdiction.

[Sgd] Bernie O. Snoddy

SWORN TO AND SUBSCRIBED before me this 19th
day of June, 1975

[Sgd] *Notary Public, State of Florida*

EXHIBIT A

September 28, 1971

Inter-County Title Guaranty and Mortgage Company
90 State Street
Albany, New York

Attention: Frank Landry

Re: Twelve Million (\$12,000,000.00) Dollar Loan to Sleepy
Hollow Lake, Inc.—Greene County, New York, DMI
Contract No. 2222—Your Preliminary Certificate and
Binder No. 32-1207 & 0

Gentlemen:

This letter and the enclosed document are being delivered to you in escrow pursuant to the instructions contained herein.

Accompanying the original of this letter is the executed Mortgage securing the above referenced loan, which was closed this day in Boston, Massachusetts, in which loan Diversified Mortgage Investors is the Lender and Sleepy Hollow Lake, Inc. is the Borrower. The loan is represented by a Promissory Note in the face amount of \$12,000,000.00, which Note has been executed and delivered to Diversified Mortgage Investors by the borrower. The accompanying Mortgage secures the repayment of the aforesaid Note, and, when recorded, should be a first, prior and superior Mortgage lien on the property described in the mortgage, subordinate only to purchase money mortgages totalling \$1,114.780. on 574.07 acres, as described in your letter of instructions from the Borrower delivered to you simultaneously with this letter.

You are authorized and requested to record the Mortgage in the appropriate public records of Greene County, New York, when you are in position to assure that you will issue your Mortgagee's Policy 21 N.Y.B.T.U. Form No. 100 D (6170) of title insurance upon the following terms and conditions:

1. The amount of the policy shall be \$5,000,000.00, with an

endorsement to insure coverage not to exceed \$12,000,000.00 upon receipt of applicable premiums and proof of no intervening liens or encumbrances.

2. The insured will be Diversified Mortgage Investors, a Massachusetts business trust.

3. The description of the property will be that contained in the Mortgage.

4. The fee simple absolute title to the property shall be vested in Sleepy Hollow Lake, Inc., a New York corporation.

5. The only exceptions permitted in the policy shall be as follows:

a. Those included in the above reference binder identified as Schedule B, items numbered 1., 3., 4., 5., 6., 7, A through 7.O., and 7.BB.

b. The purchase money mortgages attached hereto.

c. Printed exceptions in the policy.

6. Initial disbursement to you shall be \$2,251,601.71, which shall be used by you as instructed by the Borrower in its letter of instruction delivered simultaneously with this letter.

In addition to the above, the loan will be charged an additional \$385,000.00, representing fees and a discount due to or paid by the Lender, so that the total principal balance on the loan at initial disbursement will be \$2,636,601.71. Subsequent disbursements and advances will be paid pursuant to the Loan Agreement, a copy of which will be furnished to you upon request. Diversified Mortgage Investors will require endorsements to the policy as additional disbursements and advances are made, increasing the coverage and showing no additional liens.

7. Disbursement of funds will be to the escrow account of Inter-County Title Guaranty and Mortgage Company, account number 11016564, at the National Commercial Bank and Trust Company, 80 State Street, Albany, New York.

8. All expenses of closing including, but not limited to, recording fees, documentary stamps, title insurance premiums and applicable taxes and assessments shall be paid by the borrower.

9. Initial disbursement funds will be forthcoming from the First National Bank of Boston, Boston, Massachusetts, upon your telegraphic advice that you have in your possession all documents necessary to insure that Diversified Mortgage Investors will have the lien referred to above and to permit Inter County Title Guaranty and Mortgage Company to issue the title insurance policy in accordance with the requirements specified above. The initial disbursement funds are to be received and held by you in escrow until you have recorded the Deed of Trust and have issued the title policy, and upon your telegraphic advice that the foregoing has been accomplished.

10. Subsequent disbursements to be made to you will be based upon additional written instructions.

11. If the initial funds are credited to your account as aforesaid and any amount remains undisbursed for any reason as of 12:00 noon, Eastern Daylight Savings Time on Thursday, September 30, 1971, or earlier if directed by the borrower, the amount remaining undisbursed shall be returned immediately to the account of Diversified Mortgage Investors at the First National Bank of Boston, Boston, Massachusetts.

12. Interest on the loan proceeds will commence on the day the funds are transferred from Diversified Mortgage Investors' account at the First National Bank of Boston, Boston, Massachusetts, regardless of the time they may actually be made available to or on behalf of the borrower.

13. Any amendments to these instructions will be handled by telegraphic or written advice from Diversified Advisors, Inc.

Please notify the undersigned by telephone (Area Code 305, Telephone Number 667-6417), followed by telegraphic advice, when you are ready to request the funds as specified above, and when the funds have been disbursed, the Deed of Trust has been

recorded and the policy issued. The issued policy and the recorded Deed of Trust with a filing dated thereon should be mailed to the undersigned in care of Diversified Advisors, Inc., Post Office Box 2195, Coral Gables, Florida 33134.

Under no circumstances are you to disburse any of the loan proceeds until you are satisfied that Diversified Mortgage Investors will have the lien evidenced by the aforesaid Deed of Trust, and that the Deed of Trust has been recorded and that the title policy has been issued, all in accordance with the foregoing instructions.

Sincerely,

J.S. Robinson, Counsel

JSR

Exhibit A

POLICY OF TITLE INSURANCE

IN CONSIDERATION OF the payment of its charges for the examination of title and its promised for insurance, insures the within named insured against all loss or damage not exceeding the amount of insurance stated herein and in addition the costs and expenses of defending the title, estate or interest insured, which the insured shall sustain by reason of any defect or defects of title affecting the premises described in Schedule A or effecting the interest of the insured therein as herein set forth, or by reason of unmarketability of the title of the insured to or in the premises, or by reason of liens or incumbrances affecting title at the date hereof, or by reason of any statutory lien for labor or material furnished prior to the date hereof which has now gained or which may hereafter gain priority over the interest insured hereby, or by reason of a lack of access to and from the premises, excepting all loss and damage by reason of the estates, interests, defects, objections, liens, incumbrances and other matters set forth in Schedule B, or by the conditions of this policy hereby incorporated into this contract, the loss and the amount to be ascertained in the manner provided in said conditions and to be payable upon compliance by the insured with the stipulations of said conditions, and not otherwise.

IN WITNESS WHEREOF, USLIFE TITLE INSURANCE COMPANY of New York has caused this policy to be signed and sealed on its date of issue set forth herein.

s/ Stanton S. Roller
President

s/ John A. Albert
ATTEST: Secretary

s/ Frank H. Landing
Validating Officer or Agent

Name of Insured **DIVERSIFIED MORTGAGE INVESTORS,**
a Massachusetts Business Trust

Policy No. A 66070

Amount of Insurance
FIVE MILLION DOLLARS (\$5,000,000.00)

The estate or interest insured by this policy is Date of Issue
9/29/71

a mortgagee vested in the insured by means of a mortgage in the original principal sum of \$12,000,000.00 executed by Sleepy Hollow Lake, Inc. to the Insured, D. 9/28/71 and R. 9/29/71 in the Office of the County Clerk of Greene County, State of New York in L. 3 of Mortgages at page 386.

Sleepy Hollow Lake, Inc. acquired title to premises described in Schedule "A" herein, in fee simple, by virtue of the deeds of record made to it by the following grantors:

Schedule A See Annexed Rider Number 1

The premises in which the insured has the estate or interest covered by this policy is described on the description sheet annexed.

Schedule B

The following estates, interests, defects, objection to title, liens and incumbrances and other matters are excepted from the coverages of this policy:

1. Defects and incumbrances arising or becoming known after the date of the policy, except as herein provided.
2. Consequences of the exercise and enforcement or prompted enforcement of any governmental war or police powers over the premises.
3. Zoning restrictions or ordinances imposed by any governmental body.
4. Judgments against the insured or estates, interests, defects, objections, liens or incumbrances created, suffered, assumed or agreed to, by or with the privity of the insured.

5. Title to any property beyond the lines of the premises, or title to areas within or rights or easements in any abutting streets, roads, avenues, lanes, ways or waterways, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement, unless this policy specifically provides that such titles, rights, or easements are insured. Notwithstanding any provisions in this paragraph to the contrary, this policy unless otherwise excepted, insures the ordinary rights of access and egress belonging to abutting owners.
6. Compliance by the building or other erections upon the premises or their use with Federal, State, and Municipal laws, regulations and ordinances.
7. Title to any personal property, whether the same be attached to or used in connection with the premises or otherwise.
8. Mortgage in the original principal sum of \$206,300.00 executed by Sleepy Hollow Lake, Inc. to Wladimir Zarski, dated and recorded 9/29/71 in L. 389 Mp. 341. (Affects 24.13 acres of the 29.13 acres conveyed by Wladimir Zarski and Lisbeth Zarski to Sleepy Hollow Lake, Inc. by deed dated 8/23/71 and recorded 9/29/71 in L. 455, p. 298).
9. Mortgage in the original principal sum of \$206,300.00 made by Sleepy Hollow Lake, Inc. to Antonina Zarski, dated and recorded 9/29/71 in L. 389, Mp. 31 (Affects 24.13 acres of the 29.13 acres conveyed by Antonina Zarski to Sleepy Hollow Lake, Inc. by deed dated 8/20/71 and recorded 9/29/71 in L. 4 p. 267).
10. Mortgage in the original principal sum of \$272,950.00 executed by Sleepy Hollow Lake, Inc. to Nunzi Tufano, as Executor of the Last Will and Testament of Mamie Tufano, a/k/a Monica Tufano and Domenica Tufano, D. 9/23/71 and R. 9/29/71 in L. 389, Mp. 335. (Affects 54.51 acres of the 72.59 acres which were conveyed by Nunzi Tufano to Sleepy Hollow Lake, Inc. by deed dated 9/23/71 and recorded 9/29/71 in L. 455, p. 295).
11. Mortgage in the original principal sum of \$70,100.00

executed by Sleepy Hollow Lake, Inc. to Tony Kalik and Elizabeth Katasik, dated and recorded 9/29/71 in L. 389, Mp. 321. (Affects 58.13 acres of the 94.24 acres which were conveyed by Tony Kalik and Elizabeth Katasik to Sleepy Hollow Lake, Inc. D. 9/\$7!7\$ and R. 9/29/71 in L. 455, p. 279.)

12. Mortgage in the original principal sum of \$31,360.00 executed by Sleepy Hollow Lake, Inc. to Vito Cucchiara and Angelina Cucciara, his wife, dated and recorded 9/29/71 in L. 389, Mp. 316. (Affects 31.25 acres of 41.63 acres conveyed by Vito Cucchiara and Angelina Cucchiara, his wife, to Sleepy Hollow Lake, Inc. by deed dated

Endorsement

Attached to and made a part of USLIFE TITLE INSURANCE COMPANY of New York

Policy No. A-66070

Said policy is hereby amended as follows:

The name of the insureds is hereby changed as follows:

Diversified Mortgage Investors, a Massachusetts Business Trust, and Continental Mortgage Investors, a Massachusetts Business Trust, as their interests may appear.

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

Signed and sealed this 20th day of March, 1973

By

s/ Stanton S. Roller

President

Attest:

s/ John A. Albert

Secretary

Countersigned

s/ Edward Chertowsky

Agent

1. Anthony Puglisi and Anthony M. Puglisi, D. 8/16/71, R. 9/29/71 in L. 455, p. 340.
2. Attilio G. Puglisi, D. 9/20/71, R. 9/29/71 in L. 455, p. 345.
3. Viola Hearning, D. 9/22/71, R. 9/29/71, L. 455, p. 264.
4. John God, D. 9/23/71, R. 9/20/71, L. 455, p. 351.
5. Wladimir Zarski and Lisbeth Zarski, his wife, D. 8/23/71, R. 9/29/71 in L. 455, p. 298.
6. Antonina Zarski, D. 8/20/71, R. 8/29/71 in L. 455, p. 267.
7. Paul Petalas and Concetta Petalas, his wife, D. 9/21/71, R. 9/29/71 in L. 455, p. 353.
8. Munzi Tufano, Executor of the Estate of Mamie Tufano (a/k/a Monica and Dominica Tufano), D. 9/23/71, R. 9/29/71 in L. 455, p. 295.
9. James M. Cannon and Cherie D. Cannon, his wife, D. 9/25/71, R. 9/29/71 in L. 455, p. 337.
10. William Hofman and Natalia Hofman, his wife, D. 9/24/71, R. 9/29/71 in L. 455, p. 356.
11. Oldrich Sklibe and Helen R. Sklibe, his wife, D. 9/24/71, R. 9/29/71 in L. 455, p. 331.
12. Tony Kalik and Elizabeth Katasik, D. 9/17/71, R. 9/29/71 in L. 455, p. 279.
13. Paul Hromek, D. 9/17/71, R. 9/29/71 in L. 455, p. 328.
14. Victor Blom, Jr. and Dorothy S. B'om, R. 9/17/71, R. 9/29/71 in L. 455, p. 325.
15. Rudolph Sinay, D. 9/22/71, R. 9/29/71 in L. 455, p. 322.
16. Chester Skrynski and Anne Lies Skrynski, his wife, D. 9/13/71, R. 9/29/71 in L. 455, p. 319.
17. Vito Cucchiara and Angelina Cucchiara, his wife, D.

9/15/71, R. 9/29/71 in L. 455, p. 270.

18. Lewis P. Bush and Emma L. Bush, his wife, D. 9/24/71, R. 9/29/71 in L. 455, p. 310.

19. Lewis P. Bush and Emma L. Bush, his wife, D. 9/24/71, R. 9/29/71 in L. 455, p. 307.

20. John R. Focht, D. 9/17/71, R. 9/29/71 in L. 455, p. 363.

21. John R. Focht, D. 9/17/71, R. 9/29/71 in L. 455, p. 361.

22. John Kryzan, D. 9/13/71, R. 9/29/71 in L. 455, p. 302.

23. Karl Heinz Roth and Ellen Christian Roth, his wife, D. 9/22/71, R. 9/29/71 in L. 455, p. 316.

24. Henry Roth, D. 9/21/71, R. 9/29/71 in L. 455, p. 276.

25. Earl F. Morgan, D. 9/20/71, R. 9/29/71 in L. 455, p. 312.

26. Ralph L. Allen and Verna A. Allen, D. 9/16/71, R. 9/29/71 in L. 455, p. 366.

27. Augustin Maslowsky and Emilie Maslowsky, his wife, D. 9/13/71, R. 9/29/71 in L. 455, p. 261.

AMENDED RIDER "B" — (CONTINUED)

13. Mortgage in the original principal sum of \$45,000.00 executed by Sleepy Hollow Lake, Inc. to John Napeth, dated and recorded 9/29/71 in L. 389, Mp. 348. (Affects 52.79 acres, more or less, of 86.57 acres, more or less, conveyed by John Mryzen to Sleepy Hollow Lake, Inc. by deed dated 9/13/71 and recorded 9/29/71 in L. 455, p. 302.)

14. Mortgage in the original principal sum of \$82,500.00 executed by Sleepy Hollow Lake, Inc. to Henry Rath, dated and recorded 9/29/71 in L. 389, Mp. 327. (Affects 55.45 acres, more or less, out of 91.61 acres, more or less, conveyed by Henry Rath to Sleepy Hollow Lake, Inc. by deed dated 9/21/71 and recorded 9/29/71 in L. 455, p. 276.)

15. Mortgage in the original principal sum of \$200,000.00 executed by Sleepy Hollow Lake, Inc. to Ralph L. Allen and Verna A. Allen, D. 9/16/71 and R. 9/29/71 in L. 389, Mp. 374.

(Affects 280.18 acres, more or less of 406.01 acres conveyed by Ralph L. Allen and Verna A. Allen to Sleepy Hollow Lake, Inc., D. 9/16/71 and R. 9/21/71 in L. 455, p. 366.

16. Restrictive Covenants, Easements, Agreements and Consents, L. 378, p. 577; L. 387, p. 83; L. 348, p. 64; L. 249, p. 544; L. 249, p. 552.

Right of Way, L. 437, p. 785; L. 256, p. 88; L. 410, p. 713; L. 354, p. 437; L. 256, p. 87; L. 251, p. 46; L. 175, p. 376; L. 286, p. 346.

Reservation of Burying Ground, L. 264, p. 441.

Easements, L. 286, p. 345; L. 232, p. 311; L. 286, p. 344; L. 176, p. 323; L. 175, p. 375; L. 259, p. 315; L. 256, p. 119; L. 284, p. 583; L. 254, p. 368; L. 348, p. 568; L. 395, p. 503; L. 176, p. 281; L. 175, p. 374; L. 291, p. 503; L. 248, p. 502; L. 260, p. 10.

Easements, dated 1/6/71, recorded 5/24/71, L. —, p. —.

Highway Easements, L. 273, p. 394; L. 284, p. 31; L. 291, p. 483.

Oil, Gas and Mineral Lease, L. 248, p. 486; L. 281, p. 108; L. 175, p. 370; L. 248, p. 486; L. 376, p. 140; L. 393, p. 401; L. 281, p. 519; L. 260, p. 43; L. 248, p. 482; L. 175, p. 367; L. 282, p. 427; L. 254, p. 91.

Spring Rights, L. 201, p. 325; L. 175, p. 369; L. 175, p. 370; L. 204, p. 319.

Pipeline Easements, L. 383, p. 511; L. 383, p. 512.

17. Survey Reading—Premises are vacant lands with an east-west pipeline crossing property on the south end, a burial ground in the northeast portion. Exact location of Murderer's Creek is not shown. Partial location of another creek is shown in the northeasterly corner of Parcel 1. Refers to Map 25-B for bearings and distances around perimeter of Parcel 2 of the five parcels shown which are divided by several roads as shown on a survey made by Myrick and Chevalier dated August, 1971 and entitled

"Property Perimeter of Sleepy Hollow Lake", Greene County, New York.

18. The amount of acreage is not insured.

19. Unrecorded leases, if any.

Right of tenants and persons in possession.

Lease held by Herbert R. Kalleck, Jr. (Affects premises conveyed by Anthony Puglisi and Attilio Puglisi in L. 455, p. 340 and L. 455, p. 345)

20. Rights, if any, in favor of any electric light or telephone company to maintain guy wires extending from said premises to poles located on the roads on which said premises abut, but policy will insure, however, that there are no such agreements of record in connection therewith, except as may be shown herein.

21. Underground encroachments and easements, if any, including pipes and drains and such right as may exist for entry upon said premises to maintain and repair the same.

22. Riparian rights, if any, in favor of the premises herein are not insured.

23. Rights of others to drain through creeks or streams, if any, which cross premises and the natural flow thereof are excepted.

24. No title is insured to so much of the premises herein described as constitutes the burial ground and the right of way to reach the same. There may be bodies or remains of deceased persons interred therein and there are or may be rights and easements in favor of others to maintain and visit said burial ground and to inter bodies and remains therein or to remove bodies and remains therefrom. Said burial ground and the right of way to reach the same were recited in a certain deed dated 5/29/33, recorded 6/7/33 in L. 264, p. 441 made by Whitehead Brothers Company to Tony Kalik and Elizabeth Katasik, as joint tenants.

25. Pending disbursement of the full proceeds of the loan secured by the mortgage described herein, the policy will insure only to the extent of the amount actually disbursed plus interest

accrued thereon but increases as disbursements are made in good faith and without knowledge of any defects in, or objections to, the title up to the face amount of the policy and in accordance with the terms hereof. Title shall be continued down to the date of each disbursement and the Company shall furnish to the mortgagee a continuation report, stating whether, since the date hereof or since the date of the last preceding continuation report, any liens or encumbrances have been recorded, whether any taxes which have become due and payable have been paid, whether the redated survey reveals any variations, encroachments or violations of set back and whether there are any additional title exceptions or objections.

26. The amount of insurance under the terms of this policy is limited to \$5,000,000.00. If the amount of insurance is desired to be increased at any particular time, same will become effective only upon the payment of additional premiums in accordance with the existing insurance rate schedule and will be subject to any state of facts revealed by a continuation of the examination of title and the physical inspection report to such date.

CONDITIONS OF THIS POLICY

1. Definitions

- (a) Wherever the term "insured" is used in this policy it includes those who succeed to the interest of the insured by operation of law including, without limitation, heirs, distributees, devisees, survivors, personal representatives, next of kin or corporate successors, as the case may be, and those to whom the insured has assigned this policy where such assignment is permitted by the terms hereof, and wherever the term "insured" is used in the conditions of this policy it also includes the attorneys and agents of the "insured."
- (b) Wherever the term "this company" is used in this policy it means USLIFE TITLE INSURANCE COMPANY of New York.
- (c) Wherever the term "final determination" or "finally determined" is used in this policy, it means the final determination of a court of competent jurisdiction after disposition of all appeals or after the time to appeal has expired.
- (d) Wherever the term "the premises" is used in this policy, it means the property insured herein as described in Schedule A of this policy including such buildings and improvements thereon which by law constitute real property.
- (e) Wherever the term "recorded" is used in this policy it means, unless otherwise indicated, recorded in the office of the recording officer of the county in which property insured herein lies.

2. Defense and Prosecution of Suits

- (a) This company will, at its own cost, defend the insured in all actions or proceedings founded on a claim of title or incumbrances not excepted in this policy.
- (b) This company shall have the right and may, at its own cost, maintain or defend any action or proceeding relating to the title or interest hereby insured, or upon or under any covenant or contract relating thereto which it considers desirable to prevent or reduce loss hereunder.
- (c) In all cases where this policy requires or permits this company to prosecute or defend, the insured shall secure to it the right and opportunity to maintain or defend the action or proceeding, and all appeals from any determination therein, and give it all reasonable aid therein, and hereby permits it to use therein, at its option, its own name or the name of the insured.
- (d) The provisions of this section shall survive payment by this company of any specific loss or payment of the entire amount of this policy to the extent that this company shall deem it necessary in recovering the loss from those who may be liable therefor to the insured or to this company.

3. Cases Where Liability Arises

No claim for damages shall arise or be maintainable under this policy except in the following cases:

- (a) Where there has been a final determination under which the insured may be dispossessed, evicted or ejected from the premises or from some part or undivided share or interest therein.
- (b) Where there has been a final determination adverse to the title, upon a lien or incumbrance not excepted in this policy.
- (c) Where the insured shall have contracted in good faith in writing to sell the insured estate or interest, or where the insured estate has been sold for the benefit of the insured pursuant to the judgment or order of a court and the title has been rejected because of a defect or incumbrance not excepted in this policy and there has been a final determination sustaining the objection to the title.
- (d) Where the insurance is upon the interest of a mortgagee and the mortgage has been adjudged by a final determination to be invalid or ineffectual to charge the insured's estate or interest in the premises, or subject to a prior lien or incumbrance not excepted in this policy; or where a recording officer has refused to accept from the insured a

satisfaction of the insured mortgage and there has been a final determination sustaining the refusal because of a defect in the title to the said mortgage.

(e) Where the insured shall have negotiated a loan to be made on the security of a mortgage on the insured's estate or interest in the premises and the title shall have been rejected by the proposed lender and it shall have been finally determined that the rejection of the title was justified because of a defect or incumbrance not excepted in this policy.

(f) Where the insured shall have transferred the title insured by an instrument containing covenants in regard to title or warranty thereof and there shall have been a final determination on any of such covenants or warranty, against the insured, because of a defect or incumbrance not excepted in this policy.

(g) Where the insured estate or interest or a part thereof has been taken by condemnation and it has been finally determined that the insured is not entitled to a full award for the estate or interest taken because of a defect or incumbrance not excepted in this policy.

No claim for damages shall arise or be maintainable under this policy (1) if this company, after having received notice of an alleged defect or incumbrance, removes such defect or incumbrance within thirty days after receipt of such notice; or (2) for liability voluntarily assumed by the insured in settling any claim or suit without the written consent of this company.

4. Notice of Claim

In case a purchaser or proposed mortgage lender raises any question as to the sufficiency of the title hereby insured, or in case actual knowledge shall come to the insured of any claim adverse to the title insured hereby, or in case of the service on or receipt by the insured of any paper, or of any notice, summons, process or pleading in any action or proceeding, the object or effect of which shall or may be to impugn, attack or call in question the validity of the title hereby insured, the insured shall promptly notify this company thereof in writing at its main office and forward to this company such paper or such notice, summons, process or pleading. Delay in giving this notice and delay in forwarding such paper or such notice, summons, process or pleading shall not affect this company's liability if such failure has not prejudiced and cannot in the future prejudice this company.

5. Payment of Loss

(a) This company will pay in addition to the loss, all statutory costs and allowances imposed on the insured in litigation carried on by this company for the insured under the terms of this policy. This company shall not be liable for and will not pay the fees of any counsel or attorney employed by the insured.

(b) In every case where claim is made for loss or damage this company (1) reserves the right to settle, at its own cost, any claim or suit which may involve liability under this policy; or (2) may terminate its liability hereunder by paying or tendering the full amount of this policy; or (3) may, without conceding liability, demand a valuation of the insured estate or interest, to be made by three arbitrators or any two of them, one to be chosen by the insured and one by this company, and the two thus chosen selecting an umpire. Such valuation, less the amount of any incumbrances on said insured estate and interest not hereby insured against, shall be the extent of this company's liability for such claim and no right of action shall accrue hereunder for the recovery thereof until thirty days after notice of such valuation shall have been served upon this company, and the insured shall have tendered a conveyance or assignment of the insured estate or interest to this company or its designee at such valuation, diminished as aforesaid. The foregoing option to fix a valuation by arbitration shall not apply to a policy insuring a mortgage or leasehold interest.

(c) Liability to any collateral holder of this policy shall not exceed the amount of the pecuniary interest of such collateral holder in the premises.

(d) All payments made by this company under this policy shall reduce the amount hereof pro tanto except (1) payments made for counsel fees and disbursements in defending or prosecuting actions or proceedings in behalf of the insured and for statutory costs and allowances imposed on the insured in such actions and proceedings, and (2) if the insured is a mortgagee, payments made to satisfy or subordinate prior liens or incumbrances not set forth in Schedule B.

(e) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within thirty days thereafter.

6. Co-Insurance and Apportionment

(a) In the event that partial loss occurs after the insured makes an improvement subsequent to the date of this policy, and only in that event, the insured becomes a co-insurer to the extent hereinafter set forth.

If the cost of the improvement exceeds twenty per centum of the amount of this policy, such proportion only of any partial loss established shall be borne by the company as one hundred twenty per centum of the amount of this policy bears to the sum amount of this policy and the amount expended for the improvement. The foregoing provisions shall not apply to costs and attorneys' fees incurred by the company in prosecuting or providing for the defense of actions or proceedings in behalf of the insured pursuant to the terms of this policy or to costs imposed on the insured in such actions or proceedings, and shall apply only to that portion of losses which exceed in the aggregate ten per cent of the face of the policy.

Provided, however, that the foregoing co-insurance provisions shall not apply to any loss arising out of a lien or incumbrance for a liquidated amount which existed on the date of this policy and was not shown in Schedule B; and provided further, such co-insurance provisions shall not apply to any loss if, at the time of the occurrence of such loss, the then value of the premises, as so improved, does not exceed one hundred twenty per centum of the amount of this policy.

(b) If the premises are divisible into separate, independent parcels, and a loss is established affecting one or more but not all of said parcels, the loss shall be computed and settled on a pro rata basis as if this policy were divided pro rata as to value of said separate, independent parcels, exclusive of improvements made subsequent to the date of this policy.

(c) Clauses "(a)" and "(b)" of this section apply to mortgage policies only after the insured shall have acquired the interest of the mortgagor.

(d) Clauses "(a)" and "(b)" of this section apply to mortgage policies only after the insured shall have acquired the interest of the mortgagor.

(d) If, at the time liability for any loss shall have been fixed pursuant to the conditions of this policy, the insured holds another policy of insurance covering the same loss issued by any other company, this company shall not be liable to the insured for a greater proportion of the loss than the amount that this policy bears to the whole amount of insurance held by the insured, unless another method of apportioning the loss shall have been provided by agreement between this company and the other insurer or insurers.

7. Assignment of Policy

If the interest insured by this policy is that of a mortgagee, this policy may be assigned to and shall enure to the benefit of successive assignees of the mortgage without consent of this company or its endorsement of this policy. Provision is made in the rate manual of New York Board of Title Underwriters filed with the Superintendent of Insurance of the State of New York on behalf of this and other member companies for continuation of liability to grantees of the insured in certain specific circumstances only. In no circumstance provided for in this section shall this company be deemed to have insured the sufficiency of the form of the assignment or other instrument of transfer or conveyance or to have assumed any liability for the sufficiency of any proceedings after the date of this policy.

8. Subrogation

(a) This company shall to the extent of any payment by it of loss under this policy, be subrogated to all rights of the insured with respect thereto. The insured shall execute such instruments as may be requested to transfer such rights to this company. The rights so transferred shall be subordinate to any remaining interest of the insured.

(b) If the insured is a mortgagee, this company's right of subrogation shall not prevent the insured from releasing the personal liability of the obligor or guarantor or from releasing a portion of the premises from the lien of the mortgage or from increasing or otherwise modifying the insured mortgage provided such acts do not affect the validity or priority of the lien of the mortgage insured. However, the liability of this company under this policy shall in no event be increased by any such act of the insured.

9. Misrepresentation

Any untrue statement made by the insured, with respect to any material fact, or any suppression of or failure to disclose any material fact, or any untrue answer by the insured, to material inquiries before the issuance of this policy, shall void this policy.

10. No Waiver of Conditions

This company may take any appropriate action under the terms of this policy whether or not it shall be liable hereunder and shall not thereby concede liability or waive any provision of this policy.

11. Policy Entire Contract

All actions or proceedings against this company must be based on the provisions of this policy. Any other action or actions or rights of action that the insured may have or may bring against this company in respect of other services rendered in connection with the issuance of this policy, shall be deemed to have merged in and be restricted to its terms and conditions.

12. Validation and Modification

This policy is valid only when duly signed by a validating officer or agent. Changes may be effected only by written endorsement. If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents.

USLIFE TITLE INSURANCE COMPANY of New York

New York State Offices

Albany County

90 State Street, Albany, 12207 518-472-9161

Bronx County

371 East 149th Street, Bronx 10455 212-292-5200

Kings County

135 Reimsen Street, Brooklyn 11201 212-522-0777

Nassau County

170 Jericho Turnpike, Floral Park 11002
516-354-8500 212-347-2010

New York County

125 Maiden Lane, New York 10038 212-227-2700

Orange County

223 Main Street, Goshen 10924 914-294-6255-9301

Queens County

90-28 161st Street, Jamaica 11432 212-739-4001

Richmond County

7 Hyatt Street, St. George, S.I. 10301 212-442-2700

Rockland County

61 South Main Street, New City 10956
914-634-3612 212-292-1528

Suffolk County

127 W. Main Street, Riverhead 11901
516-727-4140 212-962-1445

Sullivan County

188 Broadway, Monticello 12701 914-794-2585

Warren County

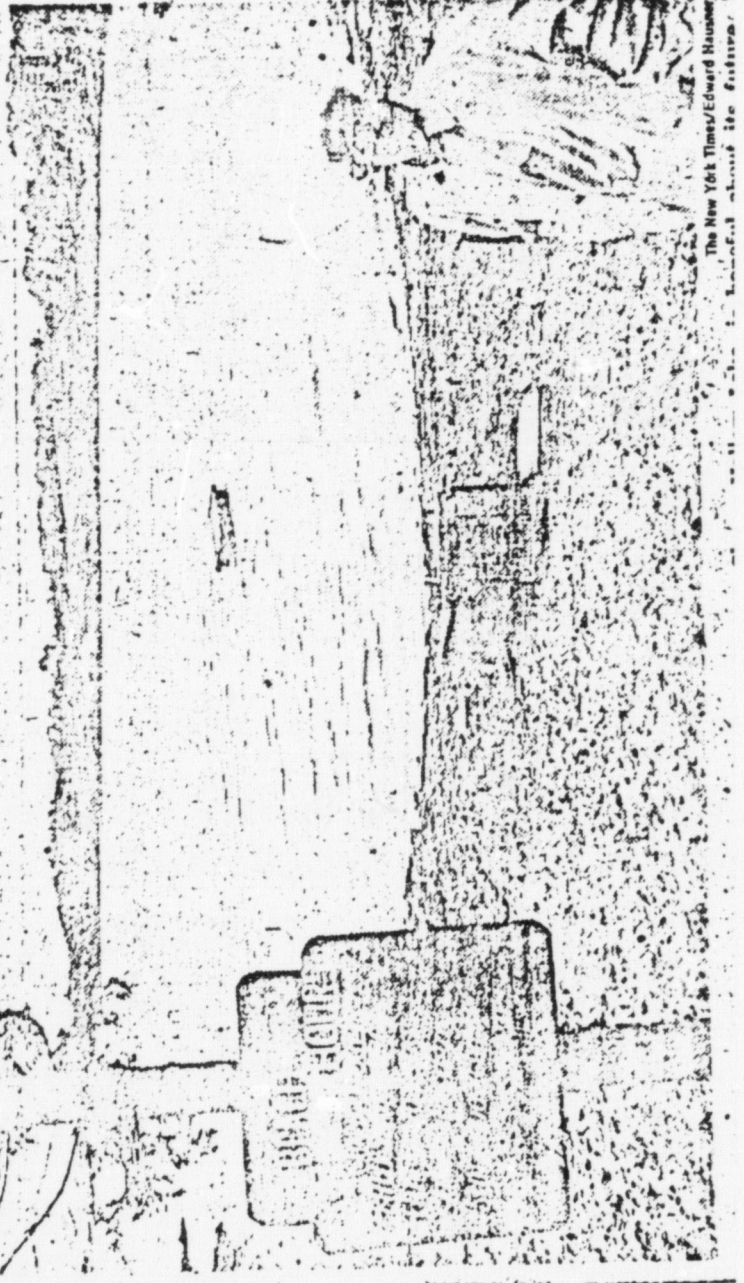
13 South Street, Glens Falls 12801 518-793-4004

Westchester County

199 Main Street, White Plains 10601
914-948-4040 212-824-0404

Troubles Beset a \$20-Million Country-Home Project

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The New York Times/Edward Hopper
Landscape about 1900

THE NEW YORK TIMES, SATURDAY, OCTOBER 19, 1974

Troubles Beset a Country-Home Project

By HAROLD FABER

Special to The New York Times

COXSACKIE, N. Y., Oct. 17—

For months last year and the year before, hundreds of buyers flocked to Sleepy Hollow Lake here, lured by a sales campaign that promised a second home in the country near what it said was the largest manmade recreational lake in the state.

Today, the October winds swept leaves down the empty dirt roads of the 1,823-acre development, where vacant lots covered with weeds surround the 323-acre lake. An occasional workman's truck rumbled by, breaking the silence.

Hard times have come to Sleepy Hollow Lake, Inc., one of the major second-home development projects in the state. It is the victim of the economic slump, the gasoline shortage, cost over-runs and an optimistic management that ran out of money.

However, spokesmen for management, property purchasers and investing companies, in interviews over the last two weeks, expressed confidence that the \$20 million project could be refinanced, that building would start up again and that the project would be completed.

But that confidence was not reflected in the official records in the County Clerk's office in the Greene County Courthouse in Catskill, five miles down the road from Sleepy Hollow. As of today, 43 contractors' liens, reflecting unpaid bills totaling more than \$1.6 million, have been filed against the developer.

Behind that backdrop of unpaid contracts, negotiations are going on involving "creditors," the developer and two mortgage investing firms, for paying off the liens and completing the roads and water and sewer systems of the project.

Lawyers for the office of the Secretary of State of New York, which is responsible for supervising the sale of subdivided lands in the state, are monitoring the negotiations, according to a spokesman for that office in Albany.

Perhaps the most interested observers of the situation are the 1,236 purchasers, most of them from the New York City metropolitan area, who signed contracts to buy land and are paying monthly interest and amortization charges although they cannot build houses yet.

"We have been told that it will all be settled in a couple of weeks," said Roy Graves, a retired financial counselor who is chairman of a committee set up to protect the rights of the property owners. "We look to the future. We think our investment is going to be a good one, even if the contractor has temporarily run out of money. It's a shame—you know the project is really 85 per cent complete right now."

Only two houses have been built and are being occupied on the vast tract of former farmland. The land, 25 miles south of Albany, straddles the Cocksackie and Athens boundaries. Four other houses have been built but are not yet occupied, five model houses have been completed and 22 other models are under construction.

Project Began in 1972

"We never get lonely," Frances Nelson said, standing in front of one of the occupied houses, which was built by her husband, Arthur, a retired carpenter. "The neighbors come on weekends to visit and our only problem is lack of a telephone."

When the project was announced in 1972, it was promoted as a model second-home-in-the-country community, with the lake as its focus. There were to have been 2,400 houses on plots averaging 12,500 square feet, with a clubhouse, a marina, tennis courts, parks, swimming pools and a center for young people.

The developer was Thomas A. Perine, chairman of the board and sole stockholder in United States Properties, Inc., which in turn owned all the stock in Sleepy Hollow Lake, Inc. Mr. Perine, who is 40 years old, had developed similar communities around Lakes in Illinois, Indiana, Virginia and California.

Lots Started at \$6,900

"It was amazing how people came up here," said Harrison Sauce, a local real-estate man who once worked for Sleepy Hollow. "Even when there was snow on the ground, people came up and bought. There was a high-pressure sales effort that was very smooth, but people got their money's worth."

The minimum lot sold for \$6,900, with a large lake-shore property going as high as \$58,000. The average buyer paid 10 per cent down and got 10 years to pay off the purchase price at a simple interest rate of 11.69 per cent. But he did not receive title to the property, and the right to build a house, until the full price was paid. About 165 purchasers have paid in full.

The tract was divided into four units, with two of them

containing 1,651 properties for early sale. The remaining two units were to be developed later. At the beginning, when the sales outlook was good, it was estimated that the income from all the sites might exceed \$30-million.

When completed, all the common property including the



The New York Times/Oct. 19, 1974

lake, the roads and the recreational facilities, but not the water and sewage systems, were to be turned over to a property owners' association, with each property having one vote. The cost of operating and maintaining the common property was estimated to be at least \$75 a year for each property owner.

The company dammed up Murderer's Creek, the stream that ran through the property to the Hudson River, to create the lake. The cost, originally estimated at \$1-million, was twice that, an augury of what was to happen.

When the economy began its downturn last year, sales began to drop off. When the gasoline situation became severe, sales

practically stopped and Sleepy Hollow's problems began to mount, according to observers here.

Robert Livsey, executive vice president of both Sleepy Hollow Lake and United States Properties, attributed the sales drop to the drying up of discretionary income and to high interest rates, which made borrowing expensive.

Heavy Spending Cited

But other observers added other factors.

"They were spending as if there was no tomorrow," Mr. Sauce said. And according to a spokesman for one of the mortgage holders, "the truth is that they were borrowing money to keep afloat until all their resources were drained."

By the time sales ceased, according to people close to the sales picture, \$10-million had been invested in the property, with mortgages totaling \$7-million held by two investing companies.

"It will take between \$3-million and \$4-million to finish the project, pay off the debts and the contractors and finish up everything in the first two sections," Mr. Livsey said by telephone from Pine Mountain Lakes, a Perine-operated, development under construction near Hickory, N.C.

Negotiations for keeping Sleepy Hollow afloat are centering on Diversified Mortgage Investors of Boston, a real-estate-investment trust that holds a \$7-million mortgage in which Continental Mortgage Investors also participates.

William Ogden, who is with Diversified Mortgage Investors, said in a telephone interview from Coral Gables, Fla., that "As the lender we absolutely want to see the project completed."

"We face massive losses if there is a problem," he said. "Our intention is to reach a

settlement with the creditors and go forward and complete the project. It has taken a long time to get in contact with everyone concerned, but we are within weeks of a solid settlement."

Mr. Ogden's optimism was shared by Mr. Graves, who was elected chairman of the property owners' committee at a meeting last month. At the meeting, the owners expressed opposition to taking over the project's common properties now because of the cost of completing them.

But Mr. Graves said he was convinced that the negotiations would succeed.

"There's too much money plowed into this project for anyone to get panicky now and jeopardize their investment," he said.

Mr. Perine was not available for comment. Many of those involved in the negotiations have given up trying to reach him, either in person or by telephone. One associate said, he was traveling in California.

"I don't think you will be able to talk to Mr. Perine; he's not handling this matter," Mr. Livsey said. "I can assure you that Mr. Perine will not talk to you."

The only representatives of Sleepy Hollow on the site were a guard at the gate and a clerk in the office. Asked for a sales brochure, the clerk issued one, but said, "We are not selling now because of financial problems."

(Letterhead of Gary A. Friedle, Esq., P.O. Box 42, One
Prospect St., New Britain, Conn. 06050, (203) 225-8636,
HARTFORD PHONE (203) 247-9552)

A. Raymond Madorin, Jr.

May 23, 1975

Sleepy Hollow Lake, Inc.
P.O. Box 67
Athens, New York

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: LOT #41, BLOCK K, UNIT 1

LOT OWNERS: ISAIAH CLARK, M.D. AND LESLIE
CLARK

Gentlemen:

Please be advised that this office represents Dr. and Mrs. Isaiah Clark, both of whom on May 27, 1973, executed one of your Sales Agreements relative to the above-captioned properties. Since July 11, 1973, the Clarks have been making monthly payments in the amount of \$229.50, with the final payment on said obligation due June 11, 1983.

At this time, in accord with Paragraph 6 of the aforementioned Sales Agreement, the Clarks are desirous of purchasing their lot free and clear of the aforementioned Sales Contract. We hereby call upon you to convey to us good and marketable or insurable title to the Clarks property by a Bargain and Sale Deed to be prepared at your expense, containing the usual statutory covenants of title as provided by New York State Law.

Previous communications directed to you go unheeded. In this instance, we are seeking an early closing date so that the Clarks can make the arrangements to hopefully begin construction of a summer home. In the event that you are unable to convey good and marketable or insurable title to the Clarks, free and clear of all liens and encumbrances, we will make demand upon you for all amounts which the Clarks have paid under their contract of May 27, 1973.

Further, due to past experience with your company, I am going to expect that an answer will be forthcoming by Tuesday, June 10, 1975.

In the event that we do not get a reply to this letter, I intend to advise the Clarks to make no further payments under their sales contract and to deposit future payments in the amount of \$229.50 with my office to be held in escrow.

Further, I will then have my clients retain New York counsel, who will institute suit for breach of contract. I trust that this will not be made necessary.

Quite frankly, my past experience with your company has been unfavorable to the point of the absurd. I expect a prompt reply to this letter.

Very truly yours,
s/ Gary A. Friedle
GARY A. FRIEDLE

GAF:eed

cc: Dr. and Mrs. Isaiah Clark
Diversified Mortgage Investors, Inc.

(Letterhead of Max Wiener, Esq., 29 Jerusalem Ave., Levittown,
N.Y. 11756, (516) PE 5-2297)

May 21st, 1975

Yegen Development Corporation
197 Cedar Lane
Teaneck, New Jersey 07666
Sleepy Hollow Lake, Inc.
Post Office Box 67
Athens, New York 12015

Re: Henry Hermes and Claire Hermes
Sleepy Hollow Lake Subdivision
Lot 5 Block UU

Gentlemen:

I wish to advise you on behalf of my clients, Mr. and Mrs. Henry Hermes, that they have received copies of news bulletins, newspaper articles and correspondence, etc. indicating that the Seller and/or its assigns appear to be greatly in debt or in poor financial condition, and that liens and encumbrances etc. have been filed or placed against the property and this project.

As already mentioned to you by my clients, they have stopped making the monthly payments because they have no definite assurance or any assurance whatsoever, that they will receive good and marketable title, free and clear of all liens and encumbrances, and free and clear of all exceptions and objections of title.

Kindly advise me on behalf of my clients, Mr. and Mrs. Henry Hermes, as to whether the news bulletins, newspaper articles and correspondence, etc. are correct or incorrect concerning the great amount of your indebtedness with respect to this project; and as to whether a number of liens, etc. have been filed against the property and this project. Also, my clients would like to know whether the Seller or its assigns can now convey good and marketable title, free and clear of all liens and encumbrances,

and free and clear of exceptions to title, should my clients consider taking title in fee to the property designated under contract dated the 8th day of July, 1973.

Awaiting your reply, I am,

Very truly yours,
s/ Max Wiener
MAX WIENER

MW:es

c.c.: Honorable Louis Lefkowitz, Attorney General
Honorable Mario Cuomo, Secretary of State
Chemical Bank,

P.S. Please understand that my clients are plain, hard-working people who can not afford to lose any money, especially when they have no absolute assurance that they are going to receive good and marketable title, etc.

REGISTERED MAIL
RETURN RECEIPT REQUESTED

EXHIBIT D

(Letterhead of Dreyer and Traub, 90 Park Avenue, New York, N.Y. 10016, (212) 661-8800)

December 4th, 1974

Trubin, Sillcocks, Edelman & Knapp Esqs.
375 Park Avenue
New York, New York 10022

Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake, Inc.
Coxsackie, New York
Your file No. 26947.001
Attention: Paul E. Roberts Esq.

Dear Mr. Roberts:

The position of U.S. Life Title Insurance Co. under its policy was made clear to you at our meeting. The company will rely upon the policy of insurance and it cannot acknowledge at this time that it is liable with respect to any of the liens to which you made reference. If there is an assertion that the liens are prior to the mortgage, we will defend against such assertion. All of the liens are subsequent in time to the mortgage.

If you propose to settle with the lienors for reasons best known to yourself, you do so at your client's expense and not at the expense of U.S. Life Title Insurance Co.

We disagree with your conclusion that the mechanics' liens to which you refer are the responsibility of our client. If you call upon us to defend under the policy against any claim not excepted in the policy, we will do so.

Very truly yours,

DREYER AND TRAUB

By s/ Samuel Kirschenbaum

SAMUEL KIRSCHENBAUM

SK:GP

(Letterhead of Trubin, Sillcocks, Edelman & Knapp, (Javits Trubin Sillcocks & Edelman), 375 Park Avenue, New York, N.Y. 10022)

December 6, 1974

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Samuel Kirschenbaum, Esq.
Dreyer and Traub
90 Park Avenue
New York, New York 10016

Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake, Inc.
Coxsackie, New York
Our File No. 26947.001

Dear Mr. Kirschenbaum:

I received your letter of December 4, 1974. Such letter states that you disagree with our conclusion that the mechanics liens which have been filed are the responsibility of U.S. Life Title Insurance Co., and characterize our request for settlement with lienors as being motivated by reasons "best known to yourself".

I must advise you that this is directly contrary to fact and to the position taken by you and your client in the meeting we had in your office on Wednesday, November 13th. As we advised you at such meeting, the need for settlement with mechanics lienors stems from the failure of U.S. Life Title Insurance Co. to have filed a proper building loan agreement pursuant to Section 22 of the New York Lien Law. The insured mortgagees, Diversified Mortgage Investors and Continental Mortgage Investors, were out of state lenders relying upon title insurance issued by your client to insure the priority of mortgage advances against mechanics liens. At the request of your client a building loan agreement was executed and forwarded for recording, but never

was recorded. Subsequent to closing the loan and receipt of the loan agreement a title policy was issued with a pending disbursement clause guarantying the priority of advances over mechanics liens.

The fact that the loan agreement was not recorded by your client first came to our attention through the claim of an attorney for several mechanics lienors. Such fact was subsequently confirmed by your client. Because of this circumstance, it would appear that litigation with mechanics lienors would lead only to the confirmation of their priority over the mortgage. This, of course, would maximize the claims which would have to be paid by your client.

In order to avoid further prejudice to the project and to your client it is necessary to effect settlement with mechanics lienors. Therefore, your client is hereby requested to immediately advise us whether or not it will participate in this endeavor. If U.S. Life Title Insurance Co. refuses to acknowledge its obligation to so participate, our client shall have no alternative other than to effect settlements themselves, and will look to your client for all costs and damages in connection with such settlements.

Very truly yours,

Paul E. Roberts

PER:lw

cc:

Edward Chertowsky—Certified Mail
Vice President, U.S. Life

Bernard M. Rifkin—Vice President
General Counsel, U.S. Life

George F. Fosket, Supervising Examiner
Lawrence Godofsky, Esq.

(Letterhead of Dreyer and Traub, 90 Park Avenue, New York, N.Y. 10016, (212) 661-8800)

April 25th, 1975

Trubin, Sillcocks, Edelman & Knapp, Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake Inc.
Coxsackie, New York—Your file No. 26947.001

Dear Mr. Roberts:

I received your letter of April 22, 1975 and upon the request of USLIFE Title Insurance Co., please be advised that we will undertake the defense of the action subject to a complete reservation of our client's right to deny liability. It is our intention to resist the claim made by the lienors asserting priority over the mortgage.

Will you please have the mortgagee arrange to meet with me at the earliest moment so that an appropriate answer may be prepared. I would like to have all of the underlying documents leading up to the making of the mortgage, all correspondence affecting the documents, the evidence of all advances made and any other papers which may be in your client's possession and bear on the issues raised by the pleadings.

If you wish to cooperate with me in the preparation and defense of this action, I will be happy to work with you with the understanding that you will look to your client for the payment of your fees and not to the title company.

Very truly yours,
s/ Samuel Kirschenbaum
SAMUEL KIRSCHENBAUM

SK:GP

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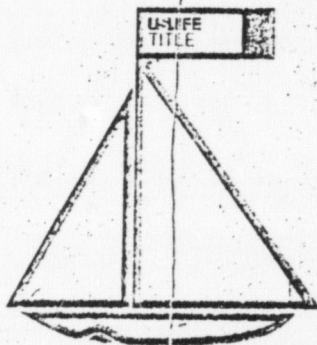
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BERLEY

We were talking about real
estate investments & the name

Lee M. Fogel

came up, who can be reached at
214-65 Queens Blvd.
Forest Hills, New York
(212) 362-8100

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A—ABSTRACTS

T—TITLE INSURANCE

G—GUARANTEES

Multiple letter symbols refer to certain title insurance companies. The explanation of these symbols is located beginning on page 5

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New York Division (Br)

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212 230-7500

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Richard Marcus, Div. Exec. V.P.

Leonard H. Factor, Div. Counsel

NEW YORK NEW YORK

**FIRST AMERICAN TITLE
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Samuel Rosner, Sr. V.P.

Joseph Friedman, Exec. V.P.

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956-7100

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750 Third Ave. 10017 T ITR

212 697-2515

Albert E. Reed, V.P.

Oscar R. King, V.P. & Mgr. Nat'l. Div.

Lee B. Friedman, State Counsel

NEW YORK NEW YORK

**METROPOLITAN TITLE
GUARANTY COMPANY (Br)**

353 Lexington Ave. 10016 T MTN

212 343-4334

Douglas O'Malley, Asst. V.P.

NEW YORK NEW YORK

**PIONEER NATIONAL TITLE
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Regional Office

119 Broadway 10005 T PNTH

212 964-1000

Howard J. Missbach, V.P., Regional Marketing

James M. Pedowitz, V.P., Regional Counsel

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212 964-1000

Edward R. Tinsley, V.P.

Arch G. Turrance, V.P.

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COMPANY**

630 Fifth Ave. 10020 T STN

212 765-7110

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Thomas Pearson, Pres.

George O. Arkin, V.P.

Robert A. Rosenberg, V.P.

Donald G. Young, V.P.

Edward Moskowitz, V.P.

Theodore Moss, V.P.

John E. Middle, Comptroller

NEW YORK NEW YORK

THE TITLE GUARANTEE COMPANY

120 Broadway 10005 T IG

212 964-1000

County City
NEW YORK NEW YORK

Capital and Surplus \$4,174,500 (after provision for statutory premium reserves of \$1,524,000)

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Richard A. Cecchetti, Pres.

John A. Keenan, Exec. V.P.

Harold J. Missbach, First V.P.

James M. Pedowitz, First V.P. & Chief Counsel

William E. Scott, Sr. V.P. & Treas.

Michael A. Lewis, Sr. V.P.

Mike Weiss, Sr. V.P.

George A. Metzger, Sr. V.P.

Julius B. Flinn, V.P. & Asst. Chief Counsel

NEW YORK NEW YORK

**THE TITLE GUARANTEE COMPANY
(Br)**

6 East 45th St. 10017 T IG

212 964-1000

Harold V. Butler, V.P.

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125 Madison Ave. 10018 T USL

212 425-8010

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Joseph H. Rooney, V.P., Admin.

Thomas Burkhardt, A.V.P. & Office Mgr.

Harry Gold, V.P. & Counsel

NIAGARA LOCKPORT

**Abstract Title (Division of)
THE TITLE GUARANTEE COMPANY
(Br)**

122 Niagara St. 14094 A T TG

716 434-2875

Ralph M. Garlock, V.P. & Br. Mgr.

Roger Schmidt, Asst. V.P.

NIAGARA NIAGARA FALLS

RICE, RICE, HUSTLEBY & CHACE

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716 285-8954

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315 RA 4-4166

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CORPORATION**

612 Charlotte St. 13501 A

315 724-1715

Frank B. Valentine, Jr., Pres. & Treas.

Clifford W. Wells, V.P.

H. Nichols, V.P.

George A. Richter, Sec'y.

S. E. Reilly, Asst. Sec'y.

ONONDAGA SYRACUSE

**Abstract Title (Division of)
THE TITLE GUARANTEE COMPANY
(Br)**

201 East Jefferson St. 13202 A T TG

315 474-1273

Carlton H. Doster, V.P. & Br. Mgr.

ONONDAGA SYRACUSE

WILLIS A. BROWN

600 Onondaga County Savings Bank Bldg., 13202

315 474-7571

NOTICE OF MOTION

[TITLE]

PLEASE TAKE NOTICE that upon the annexed affidavit of SAMUEL KIRSCHENBAUM, ESQ. and EDWARD CHERTOWSKY, both sworn to on June 27, 1975, the undersigned will move this Court at a term for motions thereof to be held in Courtroom 2804, United States Court House, Foley Square, New York, on the 1st day of July, 1975 a.m. or as soon thereafter as counsel shall be heard for:

1. AN ORDER dismissing the complaint on the grounds that it fails to show the existence of an actual justiciable controversy between the parties of the nature required by Article III of the United States Constitution and §2201 of the Judicial Code, Title 28, or in the alternative:
2. FOR AN ORDER addressed to the Court's discretion to decline entertaining jurisdiction of the subject matter of this action, or staying further proceedings in this case, on the grounds that there is presently pending in the New York State Supreme Court, Greene County, an action in which the underlying question to be determined here is presently being litigated, and on the further ground that all of the necessary and proper parties to the resolution of that question are properly before that Court and that such Court must necessarily determine the underlying question here as a matter of state law for the resolution of that action.
3. Dismissing the complaint on the grounds that plaintiff has failed to join, as defendants, those persons required to be joined under Rule 19A, in that their absence, complete relief cannot be accorded among those already parties or that they claim interest relating to the subject of the action and are so situated that the disposition of this action in their absence may, as a practical matter, impair or impede their ability to protect those interests or leave the present parties to this action subject to a substantial

risk of incurring double, multiple or otherwise inconsistent obligations by reason of their claimed interest.

4. DISMISSING the action under Rule 12-B because the complaint fails to state a claim against defendant upon which relief can be granted.

Yours etc.,
SHAW AND LEVINE

[Sgd] Jesse I. Levine,
a member of the firm
770 Lexington Avenue
New York, New York 10021
838-7127

TO: TRUBIN, SILLCOCKS, EDELMAN & KNAPP
375 Park Avenue
New York, New York

AFFIDAVIT

[TITLE]

STATE OF NEW YORK)

COUNTY OF NEW YORK)

SAMUEL KIRSCHENBAUM, being duly sworn, deposes and says:

I am a member of the firm of Dreyer and Traub. i am admitted to practice before the Courts of the State of New York and before this Court.

I was engaged by U. S. Life Title Insurance Company of New York, the defendant in this action, in the fall of 1974.

I met with Mr. Roberts of the firm of Trubin, Sillcocks, Edelman and Knapp together with Mr. Chertowsky at my office on November 13, 1973. It was at this meeting that Mr. Roberts requested that the Title Company explain its position in view of the policy of title issued by it to Diversified Mortgage Investors, Inc. under policy no. A66070. A copy of the policy was annexes to the Moving Papers as Exhibit A.

At the time of this meeting there was no action pending by any of the lienors, but a number of liens had been filed affecting the property of Sleepy Hollow Lake, Inc.

At the meeting on November 13, Mr. Roberts introduced his client as Mr. Godofsky, an officer of Diversified Advisors, Inc. Mr. Roberts further explained that Mr. Godofsky was a lawyer and he was an officer of Diversified Advisors, Inc., a name bearing similarity to the plaintiff in this action, but actually an entity separate and distinct from the plaintiff, Diversified Mortgage Investors.

The role of Diversified Advisors, Inc. was explained to be that of an advisor to the plaintiff, as the name implies, and that the corporation with which Mr. Godofsky was associated, namely Diversified Advisors, Inc., were consultants to Diversified Mortgage Investors.

I informed Mr. Roberts and Mr. Godofsky that I failed to see any basis for liability on the part of the Title Company in view of the fact that the Title Company issued a title policy at the time when there were no mechanics liens against the property which was mortgaged and that the mortgage which was insured was a mortgage to secure future advances which specifically provided in paragraph 26 thereof as follows:

"The amount of insurance under the terms of this policy is limited to \$5,000,000.00. If the amount of insurance is desired to be increased at any particular time, same will become effective only upon the payment of additional premiums in accordance with the existing insurance rate schedule and will be subject to any state of facts referred by a continuation of the examination of title and to a physical inspection report to such date".

Mr. Roberts made some reference to the fact that he understood that Sleepy Hollow Lake, Inc. had filed surety bonds with the Secretary of State to secure the completion of any improvements made on the real property, but the amounts of the bonds were not sufficient to provide a fund sufficient for the completion of all of the work encompassed by the proposed for the completion of all of the work encompassed by the proposed development even though it was sufficient for the payment of any unpaid bills as of the date of conference. In short, Mr. Roberts was looking for a way to insure a fund capable of paying all of the contractors for work performed up to the date of that meeting and for all of the work required to complete the project. I pointed out to Mr. Roberts that this was not the responsibility of the Title Company. The Title Company was not presented with a Building Loan Mortgage. There is a distinction to be made between a Building Loan Mortgage and a mortgage to secure future advances.

I made the further observation that if Diversified Mortgage Investors ever intended to enlarge or modify the obligation of the Title Company it was on written notice that additional premiums would be required to be paid and the Title Company would have

had the right to re-examine the title as to any impairments in the title thereafter.

The policy of title insurance defined the obligations of the Title Company and I pointed out to Mr. Roberts that a title policy is a contract and the obligation of the Title Company is limited and defined by the terms of the contract. If it was Mr. Roberts' contention that the title company was obliged to defend the priority of the mortgage against the claims of any lienors that the Title Company stood prepared to do so, at its own cost and expense and that under the prevailing law of the State of New York the Title Company was not obligated to admit any liability to any of the lienors or to the plaintiff, and could reserve its right to disclaim any liability should the facts be established affording them the right to do so.

It was significant to note that the mortgage which was submitted to the Title Company for insurance was not on the form adopted by the New York Board of Title Underwriters as a Building Loan Mortgage. On the contrary, the mortgage which was submitted to the Title Company was a Standard New York Board Title Underwriters Form 8014 entitled "First Mortgage—Individual or Corporation". The plaintiff did not see fit to support its application for the extraordinary relief requested in this action to make a full and complete disclosure to this Court of all of the facts and circumstances leading up to this litigation.

I am annexing hereto a copy of the mortgage which was dated September 28, 1971 between Sleepy Hollow Lake, Inc. as mortgagor and Diversified Mortgage Investors as mortgagee in the principal sum of \$12,000,000.00, which was recorded in the Greene County Clerk's Office on September 29, 1971 in Liber 389, page 386. I have not reproduced the description contained in the mortgage because it is not germane to the issues presented on this application and it is a description which takes up twenty (20) pages.

In contrast with this mortgage, I am annexing hereto and making a part hereof, as Exhibit 1, the Standard New York

Board of Title Underwriters Form 8017 entitled "Building Loan Mortgage—Individual or Corporate". The face section of the mortgage has bold type at the top thereof entitled "Building Loan Mortgage". Thus, at the time of the commitment on the part of the Title Company to issue its title policy, it was presented with a mortgage which was not a Building Loan Mortgage and it had no reason to believe that this was a Building Loan Mortgage.

When Mr. Roberts, at the meeting of November 13, 1974, pointed out to me that the mortgage contained a rider to paragraph 14 of the mortgage Subdivision J of Paragraph 14 making reference to the loan agreement, I pointed out that this paragraph was related to the acceleration provision of the mortgage and did not make reference to any Building Loan Agreement.

I received a letter from Mr. Roberts, dated November 27, 1974, in which Mr. Roberts threatened to deal directly with the mechanics lienors. A copy of his letter to me, dated November 27, 1974, is annexed hereto as Exhibit 2 to which I replied by letter dated December 4, 1974 which is contained in the Moving Papers.

The Court's attention is called to the letter of September 28, 1971 by Diversified Advisors, Inc. to Intercounty Title Guaranty and Mortgage Company (now U. S. Life Title Insurance Company of New York) in which reference is made to the delivery of the mortgage along with the letter. There is no reference to this letter to the transmittal of a "Loan Agreement". On the contrary, the letter makes reference to the fact that the promissory note was executed and delivered to Diversified Mortgage Investors by the borrower. There is no reference to the Loan Agreement in this letter transmitting the mortgage and I was advised by U. S. Life Title Insurance Company that the Loan Agreement which was subsequently exhibited to the Title Company was not shown to the Title Company at the time of the acceptance of the mortgage for recording and the Title Com-

pany's commitment to issue a title policy insuring the represented actual advance of \$5,000,000.00

I must emphasize, in any event, that the reference to a document as a "Loan Agreement" does not transform that agreement into a "Building Loan Agreement". The absence of the word "building" is most significant.

I must note that the application for the relief requested by this motion is based upon the Affidavit of Bernie O. Snoddy who represents himself to be the Managing Trustee of the plaintiff and professes to be "familiar with the complaint and the subject matter in the action". This verbiage may be cleverly drafted to create the thought that Mr. Snoddy may have personal knowledge of the facts and circumstances. I raise this question because when I asked that a representative of Diversified Mortgage Investors, familiar with the facts, meet with me as will be set forth in full hereafter, I was advised by Mr. Dan Kusick that there was no one presently associated with Diversified Mortgage Investors or Diversified Advisors, Inc. who was with these entities during 1971 or 1972.

Mr. Snoddy's affidavit does not state that he is "personally" familiar with the facts and circumstances and his affidavit, while professing to be argumentative on the law, avoids any presentation of facts as to the origin of the policy which is the subject of this action and the facts and circumstances relating to the request for mortgage insurance, and the preparation and submission of documents which are material to the issues. Mr. Snoddy argues, as his lawyers have done since they conceived of the argument to foist undue obligations upon the Title Company, that the Loan Agreement of September 28, 1971 is more in the nature of a Building Loan Agreement rather than a mortgage commitment.

In the Loan Agreement, the borrower, Sleepy Hollow Lake, Inc., represented that the loan funds were to be used solely for the purpose "set out herein and for no other purpose".

Paragraph 9 of the Loan Agreement provides that "borrower

is to arrange and provide for development and construction interim financing covering all improvements and amenities in the project".

Paragraph 11C provides "It is contemplated that one or more institutional investors will provide the interim development and construction loans to finance the various improvements to be included under the security of lender".

In addition, the lender exacted as a condition for making any advances, satisfactory evidence that "all contractors and subcontractors, laborers and materialmen have been paid", and that lender be assured that there are no liens or encumbrances of record which have not been bonded.

It was the plan of the borrower and lender that whatever fiscal improvements be made to the property that the borrower acquire the funds necessary to make those improvements from a source other than the plaintiff in this action, and that after the plaintiff was satisfied that the borrower complied with those conditions, made the improvements, paid for them with funds received from other sources, that the borrower would then advance monies under the September 28, 1971 commitment.

At the time of the meeting held with Mr. Roberts and Mr. Godofsky there was no attack upon the plaintiff's priority for the balance due under its mortgage.

It thereafter developed that a mechanics lien action was instituted. There was absolutely nothing of record which could give any intimation to the lienors that anyone could consider the plaintiff's recorded mortgage as a Building Loan Mortgage, necessitating compliance with §22 of the Lien Law.

The form of the mortgage was not a Building Loan Mortgage nor was there any reference to a Building Loan Agreement in the documents. It is not unusual in mortgage to contain references to defaults being brought about for any number of reasons. The reference in the mortgage to the "loan agreement" would not alert anyone to sincerely believe that the mortgage insured by the defendant was a Building Loan Mortgage. In fact, when the

mechanics lienors instituted a foreclosure action, it was first instituted naming only a few of the parties who are presently joined in the mechanics lien foreclosure action pending in the Supreme Court of Greene County under index number 7353 of 1975.

The action was instituted on January 21, 1975. The action had progressed to the point of appearing on the calendar for trial for the April, 1975 term. A copy of a portion of the Court Calendar for that month showing status of that case as appearing on the calendar is annexed hereto as Exhibit 3.

I had pointed out to Mr. Roberts that his concern about the priority of the plaintiff's mortgage was soon to be academic because the lienors were on the verge of proceeding to judgment without having joined Diversified Mortgage Investors in this action recognizing that Diversified did have a prior recorded mortgage and was, therefore, neither a necessary or proper party in a mechanics lien foreclosure action.

Mr. Roberts was not too happy with that observation because he was still concerned about getting the cooperation of the same contractors to complete the project, and unless the contractors received money for the work performed prior to the foreclosure, they would not undertake any work for the completion and, therefore, the completion of the foreclosure action, as it then stood, would not avail the plaintiff anything.

Thereafter a motion was made by the lienors to amend the complaint and cross-claims to bring in Diversified as a party defendant and to allege the priority of the mechanics liens under the mortgages because of the failure to file a statement under §22 of the Lien Law. The circumstances which were experienced up to that point raised a question as to the motivation for the amendment by the lienors.

By letter dated April 22, 1975, I received a copy of an order and a summons and complaint, which Mr. Roberts enclosed with his letter. A copy of his letter of April 22, 1975 requested U. S. Life Title Insurance Company to undertake the defense of the

action is annexed hereto as Exhibit 4, and made a part hereof. I responded to Mr. Roberts' letter at the request of U.S. Life Title Insurance Company, by letter dated April 25, 1975, a copy of which I am annexing as Exhibit "5", and making a part hereof. I did not receive a reply to that letter and I wrote a second letter on May 1, 1975 calling attention to the fact that the time to answer was rapidly coming to a close and I did not receive any communication from either Mr. Roberts or his client. A copy of the May 1, 1975 letter is annexed hereto as Exhibit "6", and made a part hereof.

Not having received a response to the letter of May 1st, I sent a third letter on May 2, 1975 which is annexed hereto as Exhibit "7", and made a part hereof, and then embarked on a series of a number of telephone calls and letters, the end result of which was that Mr. Roberts succeeded in keeping his client from meeting with me to enable me to prepare the facts sufficient to meet the issues raised by the mechanic lienors.

In order for the Court to have a complete record, I enclose the following correspondence as Exhibit "8",

1. Letter from Mr. Roberts dated June 5, 1975
2. Letter from Mr. Lawrence Godofsky, dated June 5, 1975.
3. Letter from Mr. Samuel Kirschenbaum dated June 11, 1975.

In the interim, I received a packet of papers containing the loan agreement of September 28, 1971 and subsequent mortgages referred to in the pleadings in the Greene County mechanics lien foreclosure action.

I then wrote to Mr. Roberts on June 11, 1975 and Mr. Roberts then advised me that Mr. Kusick of the Diversified Mortgage Investors was at his office and prepared to meet with me immediately. A copy of these letters of June 11, 1975 are annexed hereto and marked Exhibit "9".

I informed Mr. Roberts that common courtesy required that a mutually satisfactory date be arranged even if it be on

unreasonably short notice, but that I could not be expected to respond to a telephone call advising me that his client was prepared to meet with me.

When he suggested to me that the files were very voluminous and filled approximately four (4) filing cabinets, I suggested to him that my purpose in getting the facts was solely for that purpose and I was not on a mission to harass his client; that if the files were so voluminous, I would arrange to go where the files were rather than to expect someone to bring the files to my office. I made a number of telephone calls to Mr. Roberts, hoping to speak with him so that I could fix a date for the examination. Mr. Kusick in Coral Gables had agreed to have me appear at his office in Coral Gables on June 20, 1975 at which time I would make the records available. It was in this telephone conversation that he advised me there were no individuals then associated with the plaintiff or Diversified Advisors, Inc. who had any personal knowledge, but that if I had any question which went beyond the actual physical documentation that could not be answered from the document itself, he might be able to find someone who could be reached by telephone who was formerly connected with the organization who might be able to furnish an answer.

I, nevertheless, agreed to attend at his office and I asked that he have the books of account available as well as correspondence and other memoranda relating to the mortgage and the title policy.

Even if the mortgage was a Building Loan Mortgage, it was important to examine the records for evidence of the nature of any improvements to the real property; whether the improvement was in stages, whether there was evidence which could establish the nullity of mechanic liens because of the separateness of any improvement or any number of additional factors which would bear upon the validity of the mechanic liens. There might also be evidence of other guaranties and indemnities to which Diversified may look to secure its position

against the lienors. It was the obligation of Diversified under the provisions of the title policy, to cooperate in the defense of the on.

The title company was entitled to a full and complete disclosure of all of the facts, even those damaging and detrimental to the plaintiff in its claim against the Title Company.

After I had made arrangements to go to Florida and had reserved airplane tickets and made hotel accommodations, Mr. Roberts called me on the 18th of June and advised me that he does not know whether I have a right to examine his client and, in any event, his client wanted him to be present when I appeared for the examination of the records and he could not be available for the 20th.

At the conclusion of my telephone conversation with him, I delivered to him a letter dated June 18, 1975 which is annexed hereto and made a part hereof as Exhibit "10".

Mr. Roberts also delivered a letter to me on June 18, 1975 in which he expressed his offer to make available to me the facts, documents and personnel necessary to assist me with the defense of the mechanics liens action to which I promptly responded on June 19, 1975. A copy of the June 18, 1975 and June 19, 1975 letter is annexed hereto as Exhibits "11" and "12" and made a part hereof.

I thereafter received a telephone call on June 24, 1975 advising me that an officer of Diversified Mortgage Investors could not be available on Thursday, but would appear on Friday, June 27, 1975, and on June 26, 1975 I received what I trust may be the last communication I will have from Mr. Roberts advising me that he will not produce his client at all.

I am annexing a copy of my letter of June 25, 1975 acknowledging the telephone call adjourning the appearance to June 27, 1975 and a copy of Mr. Roberts letter, of the same date, to me advising me that he will not produce his client.

I responded to Mr. Roberts' letter on June 26, 1975, a copy of.

which is annexed hereto as Exhibit "13", and made a part hereof.

The foregoing was submitted at length in order to demonstrate that the plaintiff is reluctant to make a full disclosure of all of the facts and cooperate with the Title Company in its bona fide efforts to demonstrate that the mortgage which was insured by the Title Company was not a Building Loan Mortgage. If it was anything other than a simple mortgage to secure future advances, then the Title Company was the victim of an outward fraud by the failure on the part of the plaintiff to disclose to the Title Company that it was entering into a Building Loan Mortgage and Building Loan Agreement rather than a mortgage to secure future advances.

I further submit that at this point there is no justiciable controversy between the plaintiff and the defendant. The defendant was called upon to defend the priority of the mortgage which it insured. It undertook that defense. The obligation to defend is synonymous with the obligation to pay.

If the defense in the mechanics lien foreclosure action which I will handle is successful then there will be an adjudication that the plaintiff's mortgage is prior and superior to the liens of the respective mechanics lienors. The Title Company will then have established that it insured a mortgage as a first mortgage and it is exactly that.

Even though the plaintiff may be unhappy with that result because it would still leave the plaintiff without a source of labor or materials to complete a development, whatever this development may be, it is the fair and equitable thing in this case.

I do not have sufficient information to determine whether the borrower was supposed to build houses or just sub-divide lots and sell them or make other changes in the raw land on which the mortgage was placed.

Ordinarily a dispute may arise between an insurance company and the insured where the insurance company refused to defend.

It is a novel situation where the insurance company undertakes the defense and for the insured to dispute the defense and seek to establish a state of facts contrary to that which existed or which was represented in order to foist an unjust obligation upon the insurance company.

The plaintiff may have thought it was acquiring a first mortgage and the Title Company is attempting to establish in the mechanics lien foreclosure action that it enjoys that position and it is entitled to a determination of that fact.

Why should the plaintiff frustrate the defendant's efforts in the Supreme Court action to establish the plaintiff's priority? As I respectfully pointed out above, the policy of title insurance is nevertheless a contract and the parties agree to look to the contract for the rights and obligations flowing therefrom.

The policy of title insurance provides that the Title Company will, at its own cost, defend the insured in all actions or proceedings founded on a claim of title or encumbrances not accepted in the policy.

Paragraph 2b of the conditions of the policy provides: "This company shall have the right and may, at its own cost, maintain or defend any action or proceeding relating to the title or interest hereby insured, or upon, or under any covenant or contract relating thereto which it considers desirable to prevent or reduce loss hereunder."

Paragraph 2c provides that "the insured shall secure to it the right and opportunity to maintain or defend the action or proceeding . . . and give all reasonable aid therein, and hereby permits it to use therein, at its option, its own name or the name of the insured." Thus far, the plaintiff has refused to give the defendant any reasonable aid. I may expect of any insured to make a full and complete disclosure of all facts leaving the conclusion to be drawn therefrom to the trier of the facts.

I submit that it is not for this insured or its personal counsel to now attempt to describe the mortgage as a Building Loan Mortgage or the loan agreement as a Building Loan Agreement,

when in fact, the law does not support such conclusion.

The Court's attention is further respectfully called to paragraph 3 of the conditions which provide for where liability arises. This defendant will not be liable to any mechanics lienor until there has been a final determination adverse to the title upon a lien or encumbrance not accepted in this policy. That determination is the process of being made in the Supreme Court, Green County action. The term "final determination" is defined in the policy as "the final determination of a Court of competent jurisdiction after disposition of all appeals or after the time to appeal has expired".

Paragraph 5 of the conditions of the policy further provides that the Title Company will pay the loss or damage within thirty (30) days after such damage is fixed in accordance with the conditions of the policy.

It cannot be called upon, at this time, to vary its contract. In fact, if it chooses voluntarily to vary its contract it may run afoul of the insurance law because its policy of insurance and the terms and conditions thereof are on file and approved by the Superintendent of Insurance of the State of New York and cannot be willfully disregarded.

The provisions with respect to the payment of loans may be one of the reasons why the plaintiff is reluctant to expose its dealings with the borrower. It is significant that the Title Company insured the initial advance of \$5,000,000.00. It did not, and refused to, insure any subsequent loans.

The mechanics lien foreclosure action alleges that Diversified was the mortgagee in four (4) separate mortgages. In a letter addressed to U. S. Life Title Insurance Company on December 13, 1974, attorneys for the insured advised the Title Company that "Mr. Zenchack I believe, advised you that the present outstanding loan balance on the initial \$12,000,000.00 mortgage is approximately \$900,000.00."

In the documents given to me on June 11, 1975 which I characterized as incomplete, there appeared to be modifications

of loan agreements executed subsequent to September of 1971.

There were also submitted copies of recorded mortgages, one of which was typed "Second Mortgage" and the word "Second" was stricken, and the word "junior" inserted in its place so that it is labeled "Junior Mortgage". This is recorded in Liber 404, page 287. This mortgage was not insured by the Title Company.

There was another document submitted dated July 30, 1973, which makes reference to a mortgage securing \$21,300,000.00. It was also submitted that on that date a second mortgage of loan agreement dated March, 1973, which provided for a use of funds as follows:

Discount:	\$9,000,000.00
Development Research	1,126,100.00
Contingency	76,000.00
Total	1,211,100.00

The development reserve lists \$331,000.00 for a sanitary sewer, \$198,600.00 for a water system, \$496,500.00 for a straight surface including drainage and \$1000,000.00 for a bridge.

I submit that if this agreement made reference to a development for which lienors may claim liens, then it would appear that this was subsequent to the \$5,000,000.00 advance of the \$12,000,000.00 mortgage on which \$5,000,000.00 was insured by the defendant. Surely, the Title Company has just cause to raise the question of reservation. A subsequent document submitted indicated that the disbursement limitation was increased to \$7,500,000.00 in July of 1973. The supplement to the July 30, 1975 modification states that on the original loan amount of \$12,000,000.00 there was a balance of \$1,179,057.35. On the second original loan amount of \$5,000,000.00 there was a balance of \$4,420,015.03 and on the third original loan amount of \$5,000,000.00 there was a balance of \$2,105,120.05.

I respectfully submit that the Title Company is meeting its obligation under the title policy and it has the right to reserve its

demand for payment of any loss depending upon the development of the facts. Surely, at this juncture, the Title Company should not be prejudiced by making any settlements with any of the lienors.

Samuel Kirschenbaum

Sworn to before me this
day of June, 1975.

**AFFIDAVIT IN OPPOSITION
TO MOTION FOR A
PRELIMINARY INJUNCTION**

[TITLE]

STATE OF NEW YORK)

COUNTY OF NEW YORK)

EDWARD CHERTOWSKY, being duly sworn, deposes and says:

1. I am the Assistant Vice President of USLife Title Insurance Company of New York. I am personally familiar with the facts and circumstances herein and I submit this affidavit in opposition to plaintiff's motion brought on by order to show cause dated June 24, 1975 and in support of defendant's motion for a multiple relief.

2. The relationship between the plaintiff and defendant is that of insured and insurer. The defendant's obligations are contained within the four corners of the policy of title insurance which was issued by the defendant as of September 29, 1971, the date of the recording of the mortgage bearing policy number A66070. The plaintiff annexed a copy of the policy to its moving papers. However, since the copy served upon this office appears to bear an illegible copy of the policy, I am submitting a legible copy for the Court's consideration. It is particularly significant that the conditions of the policy which make a part thereof be considered by the Court.

3. There is submitted to the title company for its insurance a mortgage, on a form used as a first mortgage lien by it, for a total advance set forth in the mortgage or to secure a partial advance to be increased by future advances. The mortgage which was submitted and which was acted upon by the title insurance company in issuing its title policy was not a building loan mortgage and I submit was not intended to be one. There is a distinct difference in the State of New York between a mortgage

to secure future advances and a building loan mortgage. The title company did insure a mortgage to secure future advances only to the extent of the advances actually made and only in accordance with the terms of the policy. That obligation is contained in exceptions 25 and 26 of the policy.

4. This company never insured anything more than the initial \$5,000,000.00 advance although this plaintiff may have made other loans secured by other mortgages to the same borrower. This company did not agree to insure those additional loans and did not insure those additional loans. No premium was paid to the defendant or intended to the defendant other than the premium for the payment of the initial \$5,000,000.00 policy which is the subject of this action.

5. With respect to the action affecting this policy, I respectfully submit that there is no judicial controversy between the parties or is there any dispute or conflict as to the terms, conditions or covenants under the policy of insurance nor of the defendant's rights and obligations under the policy.

6. Plaintiff was insured on the facts submitted to the defendant that its advance of \$5,000,000.00 was secured by a first mortgage lien of \$5,000,000.00 and to the extent that any person who makes claim that they enjoy a lien not excepted in the policy superior to that of the plaintiff's mortgage, this defendant stands ready and actually is in the midst of defending such claims. Despite the fact that defendant engaged competent counsel to defend against the claim of mechanic's lienors who saw fit to amend their pleadings on the eve of trial to bring in the plaintiff as a party defendant in a mortgage foreclosure action under suspicious circumstances and despite the fact that as of this moment this plaintiff has failed and refused to disclose all of its transactions with Sleepy Hollow Lake, Inc. so as to enable defendant through counsel of its own choosing to meet the issues raised by the pleadings in the mechanic's lien action, this defendant has attempted in good faith to defend against such claims reserving its right to disclaim any liability for any reason whatsoever. There surely would be no liability at all if during the

course of the defense of the mechanic's lien action, this plaintiff refuses to give reasonable aid in the defense of that action.

7. Under the conditions of the policy, this company has the right to put the mechanic's lienors to their proof and to demonstrate to the trial of the facts that the insured did not have a building mortgage. I submit that the moment that this plaintiff characterized its mortgage as a building loan mortgage and adopted a position not in its best interest and not in the best interest of the defendant, it prejudiced the position of the company entitling the defendant to disclaim any liability.

8. However, the defendant need not grasp at the first instance or at any single action of the insured as a reason for disclaiming liability.

9. This defendant does not intend to permit this plaintiff to act the role of both insured and insurer at the insurer's expense for purposes not intended by the policy of mortgage insurance.

10. This plaintiff at a conference which I attended pointed out that the firms who filed mechanic's liens constitute the only group of contractors in the area. They enjoy a virtue monopoly and unless their claims are paid regardless of their validity of their liens, they would not be induced to come in to complete the recreational development.

11. Originally, this was represented to be a land acquisition venture wherein the owner intended to subdivide lots for sale to purchasers who would then develop and build their individual homes in a recreational area.

12. The loan agreement of September 28, 1971 was not submitted to the title company at the time of its commitment to issue a title policy and there was nothing in the mortgage itself disclosing that any one considered "the loan agreement" to be a building loan agreement.

13. The loan agreement which thereafter came into our possession relating to the \$5,000,000.00 advance did not meet the test of definition of the building loan agreement as defined by the case law and statute in this State. In fact, the building

loan agreement precluded any development or construction work without the prior approval of the lender which obligated the borrower to arrange and provide for the development and construction finance from other sources and it further provided that all contract work in excess of \$25,000.00 excluding professional services shall be bonded by acceptable surety companies for completion and payment.

14. It is respectfully submitted that if the plaintiff acted prudently and carried out the provisions of the contract, all of the persons who are now asserting mechanic's liens would have been and perhaps may be now covered by surety bonds for completion and payment.

15. This defendant would, in any event, have the right to examine as to what steps the plaintiff took to see that its agreement was enforced and carried out. If the plaintiff modified that agreement, assuming that the plaintiff's argument that the defendant is bound by that agreement has any validity, then surely such modification without the consent and approval of this defendant as an insurer would be adversely affected and this defendant would thus be released from any liability.

16. The relief sought by the plaintiff in this action and by the motion for the preliminary motion is most extraordinary and I am advised by counsel that there has been a total lack of showing the support of the relief requested both as a matter of fact and as a matter of law.

17. I fail to understand how the Secretary of State permits himself to become involved in this controversy.

18. The defendant is a public corporation which, too, has a strong obligation to its stockholders which also has an obligation to comply with the insurance law and it has an obligation and even a right to insist that its policies of insurance be adhered to by the insured as well as by the insurer. This company honors its policies and intends to honor this policy as well. It does not have the obligation under its policy to do what the Secretary of State requests or what this plaintiff requests.

19. This defendant did not make any representations to the twelve lot purchasers, this defendant did not have any obligation to see that the New York Real Property Law, Section 337, *et. seq.* was being administered properly by all officials or all parties who are obligated to take action pursuant to that statute.

20. When the Secretary of State argues that further advances of funds necessary to complete the work cannot be made by the plaintiff's mortgage lender without subordinating such funds to the mechanic's liens, he does not address himself to the issues in this case. The only issue in this case is whether the mechanic's lienors have a prior lien to the \$5,000,000.00 original advance and mortgage which was insured by this defendant. This defendant is not compared with any of the subsequent loans and we do not know whether the total advance was \$27,000,000.00 or some other figure.

21. Any mortgage lender who is faced with an incomplete project and who desires to complete the project knows as a matter of law that as to future advances after the liens are of record, he enjoys a subordinate possession with respect to those future advances.

22. Even if we had an actual building loan mortgage and a building loan contract filed, the mortgagee would not enjoy priority over advances made subsequent to the filing of mechanic's liens.

23. It is significant to make note that this lender was not obligated to make any advances. Even under the loan agreement it received the absolute right to make advances at its sole discretion. Mr. Cuomo states that there is a dispute between the plaintiff and the defendant over whether the defendant has an obligation to immediately bond or discharge the existing mechanic's liens or whether the plaintiff is entitled itself to defend the mechanic's lien claims and make settlements with mechanic's lienors. There is no such dispute.

24. This title company is defending against the claims of the mechanic's lienors and it is of the belief that it can successfully

defend against the claims of the mechanic's lienors and it is of the belief that it can successfully defend against the claims of those mechanic's lienors as we look solely to the documents and do not have a gratuitous admission contrary to act on the part of this plaintiff that the mortgage is really a building loan mortgage when it is not such a mortgage here in form or substance. On the question as to whether a plaintiff is entitled to defend by itself or make its own settlements, such a novel doctrine affecting insurance policies is absurd on its face. It runs counter to the conditions of the policy which this company had approved by the insurance department. It would mean utter chaos and destruction of any insurance company be it a title company or a casualty company for the insured to make its own election as to whether it should defend against a claim or to make settlements.

25. This company specifically excepted from hhe coverage of the policy, "defects and incumbrances arising or becoming a lien after the date of this policy, except as herein provided". This company did not insure against subsequently filed liens.

26. The conditions of the policy are material to the understanding of the obligations of this defendant. It has the absolute right under Section 2 of the Conditions of this Policy to "defend the insured in all actions or proceedings founded on a claim of title on incumbrances not excepted in this policy".

27. Section 2(b) provides:

"This company shall have the right and may, at its own cost, maintain or defend any action or proceeding relating to the title or interest hereby insured, or upon or under any covenant or contract relating thereto which it considers desirable to prevent or reduce loss hereunder."

Section 2(c) provides:

"In all cases where this policy requires or permits this company to prosecute or defend, the insured shall secure to it the right and opportunity to maintain or defend the action or proceeding, and all appeals from any deter-

mination therein, and give it all reasonable aid therein, and hereby permits it to use therein, at its option, its own name or the name of the insured."

Section 3 of the Conditions of this Policy further provides:

"No claim for damages shall arise or be maintainable under this policy except in the following cases:

(a) . . .

(b) Where there has been a final determination adverse to the title, upon a lien or incumbrance not excepted in this policy.

(c) . . .

(d) Where the insurance is upon the interest of a final mortgagee and the mortgage has been adjudged by a final determination to be invalid or ineffectual to charge the insured's estate or interest in the premises, or subject to a prior lien or incumbrance not excepted in this policy; or where a recording officer has refused to accept from the insured a satisfaction of the insured mortgage and there has been a final determination sustaining the refusal because of a defect in the title to the said mortgage.

. . ."

28. Under Section 5 of the policy, this company is not required to make any payment until thirty days after "liability has been definitely fixed in accordance with the conditions of this policy".

29. I respectfully submit that it is not for the Secretary of State to rewrite this policy or attempt to subject this insurance company to a liability which was not assumed by the company in its policy.

30. It is surprising that the Secretary of State did not disclose to this Court what action he took with respect to the surety bonds which he was required to secure in order to protect the lot purchasers.

31. The Secretary of State also does not disclose what funds he holds in trust. The reference to millions of dollars of refunds

bears no relevancy to the issues in this case. There are surety bonds posted with the Secretary of State which I have been led to believe is of a sum sufficient to pay all or most of the lienors' existing claims even before submitting them to the test of validity. I do not at this point have an opinion that the liens are in all respects valid since none of them have been tested. A mechanic's lien is a creature of statute and unless there is a strict compliance with the mechanic's lien law and unless the lienors thus satisfy all of the statutory requirements of the lien law of the State of New York, they lose the benefit of a lien even though there may be monies due to them for work, labor and services from a contracting party.

32. This defendant is entitled to test that issue even before wrestling with the question of priority as between the mechanic's lienors and this plaintiff.

33. It is surprising that the Secretary of State did not make inquiry and submit in his affidavit his understanding as to what the principal balance of the original \$5,000,000.00 loan is at the present time. I have some information which leads me to believe that the original \$5,000,000.00 had been reduced in 1973 to \$9,000,000.00. It is a fair likelihood that the balance on the original \$5,000,000.00 loan as long since been repaid and that if there is any indebtedness due from Sleepy Hollow Lake, Inc. to the plaintiff that the indebtedness exists only by reason of subsequent liens and subsequent mortgages which were not insured by this defendant.

34. Even in cases where applications for insurance are made, until this company has given its commitment to issue a policy of insurance on the date of the furnishing of its report, it does not assume any obligations to issue such policy or to insure the mortgage transaction. Suffice it to say the claim submitted by this plaintiff to this defendant arises out of policy number A66070, which related only to the \$12,000,000.00 mortgage on September 28, 1971 on which only \$5,000,000.00 was advanced and on which in 1973 the balance had been reduced to approximately \$900,000.00.

35. I respectfully submit this law in the State of New York is that once a mortgage is paid or reduced in principal it cannot be revived or renewed or enlarged even by the giving of additional consideration. In fact, it has been held that once a mortgage is paid, it is dead for all purposes.

36. Mr. Snoddy makes reference to the value of the parcel as improved for a land sales project to be in excess of \$25,000,000.00. He points out that the present balance due to the plaintiff is approximately \$7,100,000.00 and that there are claimed mechanic's liens of \$1,800,000.00, which Mr. Roberts had represented at one time could be settled for approximately 50% of the claimed face value.

37. I am of the belief that the surety bonds already filed to secure those lienors is in an amount sufficient to meet this settlement figure. If this be the case, then the plaintiff cannot point to any irreparable injury since upon a foreclosure of its mortgage, it could obtain title to this valuable piece of real property at the foreclosure sale which would be decreed in the mechanic's lien foreclosure action now pending in Green County. That action will adjudicate the priority of the liens and the validity of the liens vis-a-vis the plaintiff's mortgage which would also permit the plaintiff to establish its amount due under the original \$5,000,000.00 insured mortgage, if any, or any additional mortgages.

38. Assuming it is determined in the State action that the mechanic's lienors are valid only to the extent of \$1,000,000.00 instead of \$1,800,000.00 and assuming that it is determined in the State action that the plaintiff has a valid first mortgage of any amount up to \$5,000,000.00 and that it has a valid lien on its second or third or fourth mortgage and that the total of those mortgage liens amount to \$7,000,000.00, then a bid at the foreclosure sale of \$8,000,000.00 would satisfy the plaintiff's mortgage as well as the liens of the mechanic's lienors and give this plaintiff the free rein of developing this \$25,000,000.00 land sales project.

39. The plaintiff acknowledges that the acquisition of the raw land was approximately \$2,871,000.00 and appears, therefore, there is a substantial equity in this property which could be used to satisfy all parties.

40. I respectfully submit that this plaintiff has not made any showing that it has a clear and convincing right to the relief requested by this motion and since it runs contrary to the obligations assumed by this defendant in its policy, it is respectfully submitted that the plaintiff's motion be denied and that the defendant's motion to dismiss this complaint be granted.

Edward Chertowsky

Sworn to before me this
27th day of June, 1975.

Policy of Title Insurance

IN CONSIDERATION OF the payment of its charges for the examination of title and its premium for insurance, insures the within named insured against all loss or damage not exceeding the amount of insurance stated herein and in addition the costs and expenses of defending the title, estate or interest insured, which the insured shall sustain by reason of any defect or defects of title affecting the premises described in Schedule A or affecting the interest of the insured therein as herein set forth, or by reason of unmarketability of the title of the insured to or in the premises, or by reason of liens or incumbrances affecting title at the date hereof, or by reason of any statutory lien for labor or material furnished prior to the date hereof which has now gained or which may hereafter gain priority over the interest insured hereby, or by reason of a lack of access to and from the premises, exception all loss and damage by reason of the estates, interests, defects, objections, liens, incumbrances and other matters set forth in Schedule B, or by the conditions of this policy hereby incorporated into this contract, the loss and the amount to be ascertained in the manner provided in said conditions and to be payable upon compliance by the insured with the stipulations of said conditions, and not otherwise.



IN WITNESS WHEREOF, USLIFE TITLE INSURANCE COMPANY of New York has caused this policy to be signed and sealed on its date of issue set forth herein.

Stanton S. Rohrer

President

John A. Albert

ATTEST: Secretary

Validating Officer or Agent

Name of insured

6

Policy No.

Amount of
insuranceThe estate or interest insured by this policy is
vested in the insured by means of

Date of issue

Schedule A

The premises in which the insured has the estate or interest covered by this policy is described on the description sheet annexed.

Schedule B

The following statutory interests, defects, objections to title, liens and encumbrances and other matters are excepted from the coverages of this policy.

1. Defects and encumbrances arising or becoming a lien after the date of the policy, except as herein provided.
2. Consequences of the exercise and enforcement or attempted enforcement of any governmental war or police powers over the premises.
3. Zoning regulations or ordinances imposed by any governmental body.
4. Judgments against the insured or holder, interests, claims, objections, liens or encumbrances created, suffered, assumed or agreed to, by or with the policy of the insured.
5. Title to any property beyond the lines of the premises, or title to any within or rights or easements in any abutting streets, roads, avenues, lanes, ways or easements, or title to any within or rights or easements in any other structure or improvement, unless this policy otherwise provides that such title, rights or easements are insured. Notwithstanding any provision in this paragraph to the contrary, this policy insures title, which is not insured by the original holder of the property, and does not extend to subsequent holders.
6. Compliance by the insured with or other erection upon the premises or their use with Federal, State, and Municipal laws, regulations and ordinances.
7. Title to any personal property, whether the same be attached to or used in connection with said premises or otherwise.

EXHIBIT K PRINTED PREVIOUSLY AT PAGE 31.

U-S-LIFE TITLE INSURANCE COMPANY of New York

Policy of Title Insurance

IN CONSIDERATION OF the payment of its charges for the examination of title and its premium for insurance, insures the within named insured against all loss or damage not exceeding the amount of insurance stated herein and in addition the costs and expenses of defending the title, estate or interest insured, which the insured shall sustain by reason of any defect or defects of title affecting the premises described in Schedule A or affecting the interest of the insured therein as herein set forth, or by reason of unmarketability of the title of the insured to or in the premises, or by reason of liens or incumbrances affecting title at the date hereof, or by reason of any statutory lien for labor or material furnished prior to the date hereof which has now gained or which may hereafter gain priority over the interest insured hereby, or by reason of a lack of access to and from the premises exception all loss and damage by reason of the estates, interests, defects, objections, liens, incumbrances and other matters set forth in Schedule B, or by the conditions of this policy hereby incorporated into this contract, the loss and the amount to be ascertained in the manner provided in said conditions and to be payable upon compliance by the insured with the stipulations of said conditions, and not otherwise.

IN WITNESS WHEREOF, USLIFE TITLE INSURANCE COMPANY of New York has caused this policy to be signed and sealed on its date of issue set forth herein.



Stanton S. Roller

President

John A. Albert

ATTEST: Secretary

Francis W. Landry

Validating Officer or Agent

INSURANCE POLICY PRINTED PREVIOUSLY AT PAGES

SCHEDULE A (Description)

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Towns of Athens and Cocksackie, County of Greene, State of New York, generally bounded by Route 385 on the East, Farm to Market Road on the west, Union Street on the south and Murderer's Kill and Adams Road on the north and more particularly bounded and described as follows:

PARCEL 1—Beginning at a point on the westerly right-of-way line of Route 385 (said point being twenty-five and no hundredths feet (25.00') as measured at right angles from the centerline of Route 385) said point being also the southeast corner of the lands of Viola Hoerning and the northeast corner of the lands formerly of Anthony and Attilio Puglisi; thence north sixty-six degrees, forty-seven minutes, thirty-two seconds west ($N 66^{\circ} 47' 32'' W$) two hundred seventy-eight and fifty-eight hundredths feet (278.58') to a point; thence north sixty-five degrees, fifty-eight minutes, thirty-two seconds west ($N 65^{\circ} 58' 32'' W$) four hundred sixty-five and thirty-eight hundredths feet (465.38') to a point; thence north twenty-six degrees, thirty-seven minutes, fifty-six seconds east ($N 26^{\circ} 37' 56'' E$) four hundred eighty-four and thirty-two hundredths feet (484.32') to a point; thence north eighteen degrees, nineteen minutes, forty-two seconds east ($N 18^{\circ} 19' 42'' E$) one thousand three hundred thirty-two and sixty-five hundredths feet (1,332.65') to a point; thence north sixty-seven degrees, fifty minutes, forty-two seconds west ($N 67^{\circ} 50' 42'' W$) ninety and no hundredths feet (90.00') to a point; thence north twenty-seven degrees, thirty minutes, fifty-two seconds east ($N 27^{\circ} 30' 52'' E$) two thousand, seventy-two and fifty-three hundredths feet (2,072.53') to a point; thence south sixty-eight degrees, thirty-one minutes, two seconds east ($S 68^{\circ} 31' 02'' E$) forty and no hundredths feet (40.00') to a point; thence north twenty degrees, four minutes,

twelve seconds east (N 20° 04' 12" E) six hundred sixty-eight and eighty-nine hundredths feet (668.89') to a point; thence north twenty degrees, four minutes, twelve seconds east (N 20° 04' 12" E) six hundred sixty-eight and eighty-nine hundredths feet (668.89') to a point; thence south seventy four degrees, twenty-five minutes, forty-four seconds east (S 74° 25' 44" E) nine hundred fifty and no hundredths feet (950.00') to a point; thence north fourteen degrees, twenty-two minutes, twenty-seven seconds east (N 14° 22' 27" E) nine hundred twenty-six and thirty hundredths feet (926.30') to a point; thence north seventy-five degrees, twenty-five minutes, nine seconds west (N 75° 25' 09" W) three hundred seventy-eight and fifty hundredths feet (378.50') to a point; thence north fourteen degrees, thirty-four minutes, fifty-one seconds east (N 14° 34' 51" E) two hundred twenty-six and two hundredths feet (226.02') to a point; thence south seventy-five degrees, twenty-five minutes, seven seconds east (S 75° 25' 07" E) six hundred fifteen and sixty-eight hundredths feet (615.68') to a point on the westerly right of way line of Route 385 (said point being twenty-five and no hundredths feet as measured at right angles from the centerline of Route 385); thence proceeding in a northerly direction along the westerly right of way line of Route 385 one thousand six hundred fifty-eight and seventy-seven hundredths feet (1,658.77') to a point; thence north seventy-four degrees, five minutes, no seconds west (N 74° 05' 00" W) three hundred twenty-five and no hundredths feet (325.00') to a point; thence north nine degrees, fourteen minutes, fifty seconds east (N 09° 14' 50" E) two hundred ninety-nine and seventy-seven hundredths feet (299.77') to a point; thence north ten degrees, forty-eight minutes, three seconds east (N 10° 48' 03" E) two hundred thirty-one and sixty-two hundredths feet (231.62') to a point; thence north sixty-eight degrees, fifty-one minutes, forty-eight seconds west (N 68° 51' 48" W) four hundred forty-two and twelve hundredths feet (442.12') to a point; thence north eleven degrees, thirty-one minutes, eleven seconds east (N 11° 31' 11" E) four hundred fourteen and no hundredths feet (414.00') to a point; thence north thirteen degrees, fifty-five minutes, twenty-

six seconds east (N 13° 55' 26" E) seven hundred fifty-four and sixty hundredths feet (754.60') to a point; thence north sixty-two degrees, fifty-one minutes, forty-seven seconds west (N 62° 51' 47" W) eight hundred sixty-seven and twenty hundredths feet (867.20') to a point on a branch of Murderer's Creek; thence proceeding in a northeasterly direction along the branch of Murderer's Creek one thousand one hundred seventy and five hundredths feet (1,170.05') more or less to a point on the southerly right of way line of Adams Road; thence proceeding in a northwesterly direction along said right of way line one thousand forty and no hundredths (1,040') feet, more or less, to the point of intersection of the southerly right of way line of Adams Road with the easterly right of way line of Murderers Kill Road; thence proceeding in a southwesterly direction along the easterly right of way line of Murderer's Kill Road one hundred sixty feet (160.00') more or less, to a point; thence south fifty-two degrees, fifty minutes, thirty-one seconds east (S 52° 50' 31" E) three hundred fifty-seven and no hundredths feet (357.00') to a point; thence south eighteen degrees, fifty-five minutes, thirty-nine seconds west (S 18° 55' 39" W) five hundred seventy-eight and twelve hundredths feet (578.12') to a point; thence north eighty-one degrees, eight minutes, fifty-nine seconds west (N 81° 08' 59" W) six hundred thirty-one and sixty-seven hundredths feet (631.67') to a point on the easterly right of way line of Murderer's Kill Road; thence proceeding in a southwesterly direction along said right of way line one thousand one hundred forty-four and ninety-six hundredths feet (1,144.96') more or less to a point; thence south seventy-one degrees nineteen minutes, forty-six seconds east (S 71° 19' 46" E) four hundred ninety-nine and forty-nine hundredths feet (499.49') to a point; thence south eighteen degrees, forty minutes, thirteen seconds west (S 18° 40' 13" W) four hundred thirteen and seventy-four hundredths feet (413.74') to a point, thence south sixty-nine degrees, forty minutes, fifty-nine seconds East (S 69° 40' 59" E) forty-four and ninety-four hundredths feet (44.94') to a point; thence south twenty-seven degrees, zero minutes, forty-seven seconds west (S 27° 00' 47" W) one thousand two hundred twenty one and thirty

hundredths feet (1,221.30') to a point; thence north sixty-one degrees, thirty-five minutes, twenty-one seconds west (N 61° 35' 21" W) six hundred seventy-three and no hundredths feet (673.00') to a point; thence north thirty-one degrees, thirty-five minutes, twenty-one seconds west (N 31° 35' 21" W) Six hundred and no hundredths feet (600.00') more or less, to a point on the easterly right of way line of Murderer's Kill Road; thence proceeding in a southwesterly direction along said right of way line two hundred eighty-five and seventy-eight hundredths feet (285.78') more or less to a point; thence proceeding in a northwesterly direction and continuing along the southerly right of way line of Murderer's Kill Road one thousand seven hundred fifty-eight and no hundredths feet (1,758.00') more or less to the point of intersection of the southerly right of way line of Murderer's Kill Road with the easterly right of way line of Farm to Market Road; thence proceeding in a southerly direction along the easterly right of way line of Farm to Market Road three thousand six hundred thirty-three feet (3,633.00') more or less to a point; thence south seventy-four degrees, thirty-three minutes, twelve seconds east (S 74° 33' 12" E) two hundred thirty-one and no hundredths feet (231.00') to a point; thence south zero degrees, fifty-six minutes, twenty-nine seconds west (S 00° 56' 29" W) three hundred eighty-eight and thirty-two hundredths feet (388.32') to a point; thence south fourteen degrees, thirty-five minutes, three seconds west (S 14° 35' 03" W) three hundred six and thirteen hundredths feet (306.13') to a point; thence north eighty-four degrees, thirty-three minutes, twelve seconds west (N 84° 33' 12" W) four hundred three and forty-four hundredths feet (403.44') more or less, to a point on the easterly right of way line of Farm to Market Road; thence proceeding in a southwesterly direction along the easterly right of way line of Farm to Market Road one thousand ninety-four feet (1,094') more or less to a point; thence south sixty-three degrees, thirteen minutes, two seconds east (S 63° 13' 02" E) six hundred and no hundredths feet (600.00') to a point; thence south forty-five degrees, nineteen minutes, fifty-two seconds west (S 45° 19' 52" W) seven hundred four and ninety-four hundredths feet

(704.94') to a point; thence north seventy-one degrees, eleven minutes, twenty-three seconds west (N 71° 11' 23" W) one hundred eighty-one and thirty-six hundredths feet (181.36') to a point; thence south twenty-two degrees, twenty minutes, no seconds west (S 22° 20' 00" W) one thousand eighty-five feet (1,085') to a point; thence south seventeen degrees, forty-four minutes, forty seconds west (S 17° 44' 40" W) one hundred and no hundredths feet (100.00') to a point; thence north seventy-two degrees, fifteen minutes, twenty seconds west (N 72° 15' 20" W) three hundred ninety-six and no hundredths feet (396.00') more or less, to a point on the easterly right of way line of Farm to Market Road; thence proceeding in a southwesterly direction along the easterly right of way line of Farm to Market Road three hundred feet (300') more or less, to a point; thence south seventy-four degrees, two minutes, seventeen seconds east (S 74° 02' 17" E) three hundred and no hundredths feet (300.00') to a point; thence south fifteen degrees, fifty-seven minutes, forty-three seconds west (S 15° 57' 43" W) four hundred and no hundredths feet (400.00') to a point; thence north seventy-four degrees, two minutes, seventeen seconds west (N 74° 02' 17" W) two hundred fifty and no hundredths feet (250.00') more or less, to a point on the easterly right of way line of Farm to Market Road; thence proceeding in a southwesterly direction along said right of way line seven hundred fifty-five and eighteen hundredths feet (755.18') more or less, to a point; thence south forty-eight degrees, thirty-six minutes, twenty-six seconds east (S 48° 36' 26" E) three hundred thirty-three and eighty-two hundredths feet (333.82') to a point; thence south thirty-degrees, one minutes, forty-four seconds west (S 30° 01' 44" W) four hundred ninety-nine and three hundredths feet (499.03') to a point; thence south forty-seven degrees, forty-eight minutes, fifty-six seconds east (S 47° 48' 56" E) sixty-one and nineteen hundredths feet (61.19') to a point; thence south thirty-two degrees, six minutes, seven seconds east (S 32° 06' 07" E) sixty-five and forty-eight hundredths feet (65.48') to a point; thence south nineteen degrees, thirteen minutes, ten seconds east (S 19° 13' 10" E) thirty-eight and eighty-two hundredths feet (38.82') to a

point; thence south fifteen degrees, thirty-six minutes, forty-four seconds east (S 15° 36' 44" E) two hundred forty-two and seventy-six hundredths feet (242.76') to a point; thence south thirty-one degrees, seven minutes, twenty-seven seconds east (S 31° 07' 27" E) three hundred sixty-six and seventy-eight hundredths feet (366.78') to a point; thence south thirty-four degrees, ten minutes, thirty-six seconds east (S 34° 10' 36" E) one hundred fifty-seven and fifty hundredths feet (157.50') to a point; thence south twenty-six degrees, fifty-nine minutes, no seconds east (S 26° 59' 00" E) one hundred eighty-four and seventy-two hundredths feet (184.72') to a point; thence south thirty-one degrees, sixteen minutes, thirteen seconds east (S 31° 16' 13" E) five hundred eighty-nine and sixty-seven hundredths feet (589.67') to a point; thence south fifty-two degrees, thirty-seven minutes, one second west (S 52° 37' 01" W) one hundred fifty-seven and twenty-six hundredths feet (157.26') to a point; thence south forty-six degrees, sixteen minutes, fifty-three seconds west (S 46° 16' 53" W) one thousand two hundred thirty-two and thirty-one hundredths feet (1,232.31') to a point; thence south twenty-six degrees, eighteen minutes, thirty-eight seconds west (S 26° 18' 38" W) three hundred eight and sixty-six hundredths feet (308.66') to a point; thence south thirty-eight degrees, forty-nine minutes, eight seconds west (S 38° 49' 08" W) four hundred fifty-eight and six hundredths feet (458.06') more or less, to a point on the northerly right of way line of Union Street (Said point being twenty-five and no hundredths feet '25.00' as measured at right angles from the centerline of Union Street); thence south forty-nine degrees, twenty-one minutes, twenty-six seconds east (S 49° 21' 26" E) along the northerly right of way line of Union Street nine hundred sixty-two and one hundredths feet (962.01') more or less, to a point; thence north forty-three degrees, fifty-two minutes, fifty seconds east (N 43° 52' 50" E) one thousand three hundred fifty-one and forty-eight hundredths feet (1,351.48') to a point; thence south thirty-four degrees, thirty-five minutes, fifty-one seconds east (S 34° 35' 51" E) six hundred eighty-three and eighty-eight hundredths feet (683.88') to a point; thence south thirty-one

degrees, no minutes, fifty-four seconds west (S 31° 00' 54" W) four hundred sixty-five and forty-three hundredths feet (465.43') to a point; thence south fifty degrees, twenty-five minutes, thirty-six seconds east (S 50° 25' 36" E) seven hundred eighty-three and eight hundredths feet (783.08') to a point; thence north twenty-nine degrees, forty-seven minutes, twenty-seven seconds east (N 29° 47' 27" E) one thousand fifty-nine and thirty-three hundredths feet (1,059.33') to a point; thence south eighty-nine degrees, thirty-one minutes, four seconds east (S 89° 31' 04" E) eight hundred sixteen and fifty-six hundredths feet (816.56') more or less, to a point on Murderer's Creek; thence proceeding in a southerly direction along Murderer's Creek one thousand sixty and thirty-three hundredths feet (1,060.33') more or less to the point of intersection of Murderer's Creek with the westerly right of way line of Route 385; thence proceeding in a northeasterly direction along the westerly right of way line of Route 385 five thousand thirty-four feet (5,034') more or less, to the point and place of beginning, said parcel containing one thousand four hundred twenty-six and twenty-two hundredths acres (1,426.22 acres) of land, more or less.

PARCEL 2

ALL that tract, piece or parcel of land being in the Town of Athens, County of Greene, State of New York and more particularly described as follows:

Parcel 2: Beginning at a point on the westerly right of way line of Farm to Market Road (said point being twenty-five and no hundredths feet '25.00', more or less, as measured at right angles from the centerline of Farm to Market Road) said point being also the southeast corner of the parcel herein described; thence north seventy-eight degrees, fifty-two minutes, seventeen seconds west (N 78° 52' 17" W) a distance of four hundred and no hundredths feet (400.00') to a point; thence south ten degrees, nine minutes, twenty-seven seconds west (S 10° 09' 27" W) a distance of nine hundred seventy-eight and seventy-four hundredths feet (978.74') to a point; thence north sixty-five

degrees, two minutes, twenty-eight seconds west (N 65° 02' 28'' W) a distance of forty-five and no hundredths feet (45.00') to a point; thence south seventy-four degrees, thirty-eight minutes, twenty-five seconds west (S 74° 38' 25'' W) a distance of fifty-two and seventy-four hundredths feet (52.74') to a point; thence south eighty-two degrees, twelve minutes, twenty seconds west (S 82° 12' 20'' W) a distance of sixty-seven and fifty-seven hundredths feet (67.57') to a point; thence south eighty-two degrees, forty minutes, twenty-five seconds west (S 82° 40' 25'' W) a distance of eighty-seven and sixty-three hundredths feet (87.63') to a point; thence south seventy-eight degrees, two minutes, forty-seven seconds west (S 78° 02' 47'' W) a distance of one hundred nine and ten hundredths feet (109.10') to a point; thence south sixty-nine degrees, fifty-nine minutes, thirty-seven seconds west (S 69° 59' 37'' W) a distance of two hundred six and fifty-one hundredths feet (206.51') to a concrete monument; thence south twenty-three degrees, fifty-two minutes, fifty-five seconds west (S 23° 52' 55'' W) a distance of two hundred fifteen and ninety-two hundredths feet (215.92') to a marked rock; thence degrees, seventeen minutes, forty-nine seconds west (S 36° 17' 49'' W), a distance of seven hundred sixty-nine and thirty-two hundredths feet (769.32') to a concrete monument; thence south twenty degrees, twenty-three minutes, three seconds west (S 20° 23' 03'' W) a distance of two hundred thirty-six and no hundredths feet (236.00') to a point; thence north seventy degrees, seventeen minutes, seventeen seconds west (N 70° 17' 17'' W) a distance of four hundred thirty-one and twenty-seven hundredths feet (431.27') to a point, said point being common to the lands now or formerly of Van Hoesen on the west, Albright on the south and Ralph Allen on the north; thence north twenty-five degrees, fifty-four minutes, five seconds east (N 25° 54' 05'' E) a distance of one thousand, thirty-four and twenty-six hundredths feet (1,034.26') to a point; thence north sixty-seven degrees, twenty minutes, forty-eight seconds west (67° 20' 48'' W) a distance of five hundred eighty and forty-four hundredths feet (580.44') to a point; thence north seven degrees, forty-eight minutes, sixteen seconds east (N 7° 48' 16''

E) a distance of seventy-one and twenty-seven hundredths feet (71.27') to a point; thence north one degree, forty-four minutes, thirty seconds west ($N 1^{\circ} 44' 30'' W$) a distance of eighty-three and seventy-three hundredths feet (83.73') to a point; thence north sixty degrees, twenty-six minutes, fifty-eight seconds east ($N 60^{\circ} 26' 58'' E$) a distance of seventy-nine and twenty-two hundredths feet (79.22') to a point; thence north thirty-three degrees, nine minutes, thirty seconds east ($N 33^{\circ} 09' 30'' E$) a distance of one hundred six and twenty-three hundredths feet (106.23') to a point; thence north fourteen degrees, fifty five minutes, thirty seconds east ($N 14^{\circ} 55' 30'' E$) a distance of eighty-seven and thirty-three hundredths feet (87.33') to a point; thence north sixty-four degrees, forty-seven minutes, twenty-six seconds east ($N 64^{\circ} 47' 26'' E$) a distance of twenty-one and seventy hundredths feet (21.70') to a point; thence north fourteen degrees, five minutes, twenty-six seconds west ($N 14^{\circ} 05' 26'' W$) a distance of seventy and eighteen hundredths feet (70.18') to a point; thence north eight degrees, fourteen minutes, twenty seconds east ($N 8^{\circ} 14' 20'' E$) a distance of forty-five and forty-nine hundredths feet (45.49') to a point; thence north forty-three degrees, forty-six minutes, four seconds west ($N 43^{\circ} 46' 04'' W$) a distance of one hundred one and fifteen hundredths feet (101/15') to a point; thence north twenty-four degrees, forty-seven minutes, twenty-two seconds west ($N 24^{\circ} 47' 22'' W$) a distance of two hundred ten and twenty-two hundredths feet (210.22') to a point; thence north twenty-seven degrees, thirty minutes, thirty-nine seconds west ($N 27^{\circ} 30' 39'' W$) a distance of one hundred sixty-nine and eighty-nine hundredths feet (169.89') to a point; thence north eleven degrees, fifty-two minutes, fifty-one seconds west ($N 11^{\circ} 52' 51'' W$), a distance of one hundred forty-seven and sixty-eight hundredths feet (147.68') to a point; thence north eighteen degrees, forty-six minutes, fourteen seconds east ($N 18^{\circ} 46' 14'' E$) a distance of one hundred eighty-six and ninety-one hundredths feet (186.91') to a point; thence north twenty-three degrees, forty-nine minutes, twenty-five seconds east ($N 23^{\circ} 49' 25'' E$) a distance of one hundred forty-seven and eighty hundredths feet (147.80') to

a point; thence north zero degrees, thirty-one minutes, forty-seven seconds east (N 0° 31' 47" E) a distance of one hundred thirteen and forty-four hundredths feet (113.44') to a point; thence north forty-five degrees, fifty-nine minutes, fifty-two seconds east (N 45° 59' 52" E), a distance of seventy-nine and twenty-one hundredths feet (79.21') to a point; thence north forty-nine degrees, twenty-six minutes, twenty seconds east (N 49° 26' 20" E) a distance of one hundred thirty-six and twenty hundredths feet (136.20') to a point; thence north forty-one degrees, four minutes, thirty-six seconds east (N 41° 04' 36" E) a distance of sixty-four and fifty-four hundredths feet (64.54') to a point; thence north sixty-seven degrees, thirty-three minutes, eighteen seconds east (N 67° 66' 18" E) a distance of one hundred twenty-five and no hundredth feet (125.00') to a point; thence north twenty-eight degrees, thirty-six minutes, eleven seconds east (N 28° 36' 11" E) a distance of sixty-one and fifty-two hundredths feet (61.52') to a point; thence north forty-nine degrees, forty-five minutes, thirty-one seconds east (N 49° 45' 31" E) a distance of one hundred eighty-one and sixty-eight hundredths feet (181.68) to a point; thence north thirty-one degrees, forty-three minutes, fifteen seconds east (N 31° 43' 15" E) a distance of ninety-eight and seventy-five hundredths feet (98.75') to a point, said point being the northwest corner of the parcel herein described; thence south sixty-eight degrees, two minutes, twenty seconds east (S 68° 02' 20" E) along the property line of lands of Weis on the north and the lands of Ralph Allen on the south, a distance of seven hundred seventy-nine and ninety-two hundredths feet (779.92') to a point; thence south sixty-four degrees, forty-one minutes, forty-one seconds east (S 64° 41' 41" E) a distance of four hundred sixty-nine and sixty-nine hundredths feet (469.69') to a point; thence south sixty-four degrees, fourteen minutes, thirteen seconds east (S 64° 14' 13" E) a distance of two hundred ten and no hundredths feet (210.00') to a point; thence south sixty-two degrees, fourteen minutes, thirteen seconds east (S 62° 14' 13" E) a distance of one hundred thirty-two and no hundredths feet (132.00') to a point; thence south eighty-three degrees, fifty-nine minutes, twenty-one

seconds east (S 83° 59' 21" E) a distance of one hundred ninety-eight and no hundredths feet (198.00') to a point; thence south eighty-seven degrees, fourteen minutes, twenty-one seconds east (S 87° 14' 21" E) a distance of ninety-seven and no hundredths feet (97.00') more or less, to a point on the westerly right of way line of Farm to Market Road (said point being twenty-five and no hundredths feet (25.00) more or less, as measured at right angles from the centerline of Farm to Market Road) said point being the northeast corner of the parcel herein described; thence proceeding in a southerly direction along the westerly right of way line of Farm to Market Road a distance of five hundred and eighty-three and twenty-two hundredths feet (583.22') more or less to the point and place of beginning, said parcel contains ninety-four and five hundredths acres (94.05 acres) of land, more or less.

PARCEL 3

ALL that tract, piece or parcel of land being in the Town of Athens, County of Greene, State of New York and more particularly described as follows:

Parcel 3: Beginning at a point on the easterly right of way line of Route 385 (said point being twenty-five and no hundredths feet '25.00', as measured at right angles from the centerline of Route 385) said point being also the southwest corner of the lands now or formerly of Manuelli and the northwest corner of the parcel herein described; thence south forty-six degrees, fifty-two minutes, twenty-four seconds east (S 46° 52' 24" E) along the property line of the lands now or formerly of Manuelli on the north and the lands of Puglisi on the south, five hundred eighteen and fifty-six hundredths feet (518.56') to a point; thence north twenty-nine degrees, no minutes, thirty-six seconds east (N 29° 00' 36" E) two hundred and no hundredths feet (200.00') to a point; thence north forty-three degrees, seven minutes, thirty-six seconds east (N 43° 07' 36" E) one hundred twenty-five and no hundredths feet (125.00') to a point; thence south forty-six degrees, fifty-two minutes, twenty-four seconds

east (S 46° 52' 24" E) along the property line of the lands now or formerly of Blumers on the north and the lands of Puglisi on the south nine hundred thirty-four and ten hundredths feet (934.10') to a point; thence south sixteen degrees, thirty-nine minutes, four seconds west (S 16° 39' 04" W) along the property line of the lands of Petramale on the east and the lands of Puglisi on the west, two hundred seventy-five and sixteen hundredths feet (275.16') to a point; thence south thirty-four degrees, thirty-nine minutes, fifty-one seconds west (S 34° 39' 51" W) two thousand four hundred five and twenty-nine hundredths feet (2,405.29') to a point; thence south thirty degrees, ten minutes, forty seconds west (S 30° 10' 40" W) along a line being thirty three feet (33.00') westerly from and parallel to a row of brick buildings, six hundred fifty-nine and twenty-eight hundredths feet (659.28') more or less, to a point on the northerly right of way line of brick row; thence proceeding in a northwesterly direction along the northerly right of way line of brick row six hundred fifteen and sixty hundredths feet (615.60') more or less, to a point on the easterly right of way line of Route 385; thence proceeding in a northeasterly direction along the easterly right of way line of Route 385 a distance of three thousand four hundred eighty-three and forty-five hundredths feet (3,483.45') more or less to the point and place of beginning, said parcel containing ninety and forty hundredths acres (90.40 acres) of land, more or less.

PARCEL 4

ALL that tract, piece or parcel of land being in the Town of Cocksackie, County of Greene, State of New York and more particularly described as follows:

Parcel 4: Beginning at a point on the easterly right of way line of Murderer's Kill Road (said point being twenty-five and no hundredths feet '25.00' as measured at right angles from the centerline of Route 385); thence south eighty-four degrees, forty-eight minutes, twenty seconds east (S 84° 48' 20" E) a distance of one hundred sixty-seven and ninety-eight hundredths feet

(167.98') to a point; thence north fifty-one degrees, twenty minutes, twenty-five seconds east (N 51° 20' 25" E) a distance of ninety-six and five hundredths feet (96.05') to a point; thence south seventy-seven degrees, eleven minutes, forty-five seconds east (S 77° 11' 45" E) a distance of one hundred twelve and eight hundredths feet (112.08') to a point; thence north seventy-two degrees, fifty-two minutes, twenty-four seconds east (N 72° 52' 24" E) a distance of one hundred sixty-five and fifty hundredths (165.50') to a point; thence south sixty-eight degrees thirty-four minutes, one second east (S 68° 34' 01" E) a distance of two hundred forty-seven and no hundredths feet (247.00') to a point; thence south ten degrees, fifteen minutes, fifty-seven seconds west (S 10° 15' 57" W) a distance of four hundred eighty-six and thirty-four hundredths feet (486.34') to a point; thence south eighty-three degrees, six minutes, thirty-five seconds east (S 83° 06' 35" E) a distance of six hundred seventy-eight and no hundredths feet (678.00') to a point; thence south ten degrees, twenty-seven minutes, fifty-one seconds west (S 10° 27' 51" W) a distance of eight hundred seventy-one and fifty-nine hundredths feet (871.59') to a point; thence south fifty-eight degrees, fifty-eight minutes, forty-four seconds east (S 58° 58' 44" E) a distance of three hundred fifty-nine and ninety-five hundredths feet (359.95') to a point; thence south twenty-nine degrees, thirty-one minutes, thirty-two seconds west (S 29° 31' 32" W) along the property line of the lands of Carl on the east and the lands of Tony Marlik on the west, a distance of seven hundred seventy and no hundredths feet (770.00') more or less to a point on the northerly right of way line of Adams Road said point being also the southwest corner of the lands of Carl and the southeast corner of the parcel herein described; thence proceeding in a northwesterly direction along said right of way a distance of one thousand thirty-one and sixty four hundredths feet (1,031.64') more or less to a point; thence north twenty-six degrees, four minutes, forty-one seconds east (N 26° 04' 41" E) two hundred twenty-six and thirty-nine hundredths feet (226.39') to a point; thence north seventy-five degrees, twenty minutes, twenty-four seconds west (N 75° 20' 24" W) one

hundred ninety and twenty-nine hundredths feet (190.29') to a point; thence south twenty-six degrees, twenty-three minutes, thirty-four seconds west (S 26° 23' 34" W) one hundred seventy and twenty-six hundredths feet (170.26') more or less to a point on the northerly right of way line of Adams Road; thence proceeding in a northwesterly direction a distance of three hundred thirty and no hundredths feet (330.00') more or less, to a point of intersection of the northerly right of way line of Adams Road with the easterly right of way line of Murderer's Kill Road, said point being also the southwest corner of the parcel herein described; thence proceeding in a northerly direction along the easterly right of way line of Murderer's Kill Road, a distance of one thousand five hundred sixty-four and seventy-six hundredths feet (1,564.76') more or less, to the point and place of beginning, said parcel containing fifty-eight and sixty-three hundredths acres (58.63 acres) of land, more or less. Excepting from this fifty-eight and sixty-three hundredths acre (58.63 acre) parcel a fifty hundredths acre (0.50 acre) burial ground to be retained by the widow Kenredy's family as a burial ground with the right of passage to and from the same.

PARCEL 5

ALL that tract, piece or parcel of land being in the Town of Cossackie, County of Green, State of New York and more particularly described as follows:

Parcel 5: Beginning at the point of intersection of the northerly right of way line of Murderer's Kill Road with the easterly right of way line of Farm to Market Road; thence proceeding in a southeasterly direction along the northerly right of way line of Murderer's Kill Road one thousand five hundred ninety-six feet (1,596') more or less, to the point of intersection of the northerly right of way line of Murderer's Kill Road with Murderer's Creek; thence proceeding in a northeasterly direction along the northerly right of way line of Murderer's Kill Road two hundred fifty-five and sixty nine hundredths feet (255.69') more or less to a point; thence north twenty-three degrees, nine minutes, forty-

seven seconds east (N 23° 09' 47" E) two thousand twenty-six and forty-eight hundredths feet (2,026.48') to a point; thence south eighty-one degrees, forty-eight minutes, forty-three seconds east (S 81° 48' 43" E) three hundred and no hundredths feet (300.00') to a point; thence north five degrees, twenty-six minutes, three seconds east (N 05° 26' 03" E) one thousand eight hundred twenty-three and seventy-two hundredths feet (1,823.72') to a point; thence north seventy-five degrees, fifteen minutes, twenty-six seconds west (N 75° 15' 26" W) one thousand two hundred sixty-three and forty hundredths feet (1,263.40') to a point; thence north eighty degrees, forty-one minutes, thirty seconds west (N 80° 41' 30" W) one thousand six hundred seventy-two and twenty hundredths feet (1,672.20') more or less to a point on the easterly right of way line of Farm to Market Road; thence proceeding in a southerly direction along the easterly right of way line of Farm to Market Road four thousand two hundred four feet (4,204') more or less to the point and place of beginning, said parcel No. 5 containing two hundred twenty-eight and ninety-four hundredths acres (228.94 acres) more or less.

**CONDITIONS OF THIS POLICY PRINTED PREVIOUSLY AT
PAGE 31.**

USLIFE TITLE INSURANCE COMPANY of New York**Endorsement**

Attached to and made a part of USLIFE TITLE INSURANCE COMPANY of New York

Policy No. **A-66070**

Said policy is hereby amended as follows:

The name of the insureds is hereby changed as follows:

**Diversified Mortgage Investors, a Massachusetts
Business Trust, and Continental Mortgage Investors,
a Massachusetts Business Trust, as their interests
may appear.**

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.



Signed and sealed this **20th** day of **March**, 19 **73**

By

Stanton S. Roller

President

Attest:

John A. Albert

Secretary

Countersigned

Edward Chertowsky

Agent

Serial No. BO 744

THIS MORTGAGE, made the 28th day of September, nineteen hundred and seventy-one BETWEEN SLEEPY HOLLOW LAKE, INC., a New York corporation, having its principal place of business in the Town of Catskill, Green County, New York, the mortgagor, and DIVERSIFIED MORTGAGE INVESTORS, a Massachusetts business trust, having its principal place of business at 225 Franklin Street, Boston, Mass., the mortgagee, WITNESSETH, that to secure the payment of an indebtedness in the sum of Twelve Million and no/100 (\$12,000,000.00) dollars, lawful money of the United States, to be paid as provided in a promissory note bearing even date herewith, with interest thereon to be computed from the date hereof, at the rate of ten (10%) per centum per annum and to be paid monthly thereafter, commencing the 1st day of November, 1971, together with all additional interest payable in the manner set forth in the loan agreement bearing even date, all according to a certain note of obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Towns of Athens and Coxsackie, Greene County, New York, more particularly described in the "Perimeter Description of lands of Sleepy Hollow Lake, Inc.", which is annexed hereto and made a part hereof:

GREENE COUNTY, SS

I hereby certify that there has been paid as mortgage tax on this instrument the sum of \$60,000.00 dated Sept. 27, 1971.

[Sgd]

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises:

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

TOGETHER with all awards heretofore and hereafter made to the mortgagor, for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.
3. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any instalment of principal or of interest for fifteen days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in instalments at the application of the mortgagor or lessee of the premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first instalment becomes due or payable or a lien.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.
7. That the mortgagor within five days upon request in person or within ten days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.
8. That notice of demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the fire insurance policies required by paragraph No. 2 above shall contain the usual extended coverage endorsement; that in addition thereto the mortgagor, within thirty days after notice and demand, will keep the premises insured against war risk and any other hazard that may reasonably be required by the mortgagee. All of the provisions of paragraphs No. 2 and No. 4 above relating to fire insurance and the provisions of Section 254 of the Real Property Law construing the same shall apply to the additional insurance required by this paragraph.
11. That in case of a foreclosure sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.
12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagor, upon the occurrence of any one or more of the following events, to-wit: (a) after the mortgage, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; or (f) if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property secured hereby, where the same are promptly replaced by identical or similar fixtures and articles of personal property at least equal in quality and condition to those replaced, free from claims, mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) after thirty days' notice to the mortgagor, in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (i) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage.

15. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

16. That the execution of this mortgage has been authorized by the board of directors of the mortgagor.

14.(j) or if the mortgagor defaults or fails to perform any of the terms and conditions contained in the loan agreement between the parties which has been executed simultaneously herewith and bears even date herewith; the terms of said loan agreement being incorporated herein by reference.

The maximum amount which may be advanced or secured under this mortgage under any circumstances is the sum of \$12,000,000.00.

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees" whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor, and its
IN PRESENCE OF: corporate seal annexed hereto by order of its
board of directors.

SLEEPY HOLLOW LAKE, INC.

By Steven K. Fair
Steven K. Fair
Executive Vice-Pres.

STATE OF NEW YORK, COUNTY OF

§ 5.1

On the day of 19 , before me
personally came

to me known to be the individual described in and
who executed the foregoing instrument, and acknowl-
edged that executed the same.

MASSACHUSETTS

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK

§ 5.1

On the 28th day of September 1971, before me
personally came Steven K. Fair
to me known, who, being by me duly sworn, did de-
pose and say that he resides at No. 5209
Halitoe Trail, Davie, Florida
that he is the Executive Vice-Pres.
of a Sleepy Hollow Lake, Inc.
the corporation described
in and which executed the foregoing instrument; that
he knows the seal of said corporation; that the seal
affixed to said instrument is such corporate seal; that
it was so affixed by order of the board of directors of
said corporation, and that he signed his name
thereto by like order.



Steven K. Fair
The Commissioner Expires
December 30, 1976

Mortgage

Serial No. 90 744

Title No. _____

TO

STANDARD FORM OF NEW YORK LOANED OF TITLE UNDERWRITERS
Distributed by
**INTER-COUNTY TITLE GUARANTY
and MORTGAGE COMPANY**
CHARTERED 1927 IN NEW YORK

SECTION

BLOCK

LOT

COUNTY OR TOWN

Recorded At Request of
INTER-COUNTY Title Guaranty and Mortgage Company
RETURN BY MAIL TO

01 NUNLNU
RECORDED 1971 SEP 29 10 30 AM
FILED 1971 SEP 29 10 30 AM
CLERK OF COUNTY OF CUYAHOGA

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

RECEIVED
25110 SEP 29 1971

SEP 29 3 34 PM '71

Recorded on the day
of 19 at o'clock in the
of Mortgages at page indexed and examined.

Cuyahoga County, ss

Clara B. Brown
Clerk

LIBR 389 PAGE 410

C11. 103M-9-69-045333

The Commonwealth of Massachusetts

JOHN F. X. DAVOREN
Secretary of the Commonwealth

D 8115

Boston,

Sept. 28, 1971

I hereby certify, That at the date of the attestation hereto annexed

Svenn E. Glauer

whose name is signed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking such acknowledgment, proof or affidavit, a NOTARY PUBLIC for the said Commonwealth duly commissioned and sworn; that to *her* acts and attestations as such, full faith and credit are and ought to be given in and out of court; that as such Notary Public *she* was by law authorized to take the same, to take depositions, to administer oaths and take acknowledgments of deeds or conveyances of lands, tenements or hereditaments and other instruments throughout the Commonwealth to be recorded according to law; that I have compared *her* signature to the annexed attestation with the original on file in this office, and verily believe it to be genuine. I further certify that the impressions of the seals of Notaries Public are not required by law to be filed in this office.

In testimony of which, I have hereunto affixed the
Great Seal of the Commonwealth

the date above written.

John F. X. Davoren

JOHN F. X. DAVOREN
Secretary of the Commonwealth

LIBER 389 PAGE 411

Standard Mortgage Form No. 54-12-67 Revised from Mortgage Indemnity Co. Corporation

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT — THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS MORTGAGE, made the _____ day of _____, nineteen hundred and _____
BETWEEN

and

, the mortgagor,

WITNESSETH, that to secure the payment of an indebtedness in the sum of _____

, the mortgagee,

lawful money of the United States or so much thereof as may be advanced, to be paid _____

dollars,

with interest thereon to be computed from the date of each advance, at the rate of _____ per centum
per annum, and to be paid on the _____ day of _____ 19 _____, next ensuing and
thereafter,

_____ according to a certain bond,
note or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the _____

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, microwaves, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and addition thereto;

TOGETHER with all awards heretofore and hereafter made to the mortgagor for taking as eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.
3. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any installment of principal or of interest for fifteen days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in installments at the application of the mortgagor or lessee of the premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first installment becomes due or payable on a lien.
5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may do the same.
7. That the mortgagor within five days upon request in person or within ten days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.
8. That notice and demand or request may be in writing and may be served in person or by mail.
9. That the mortgagor warrants the title to the premises.
10. That the fire insurance policies required by paragraph No. 2 above shall contain the usual extended coverage endorsement; that in addition thereto the mortgagor, within thirty days after notice and demand, will keep the premises insured against war risk and any other hazard that may reasonably be required by the mortgagee. All of the provisions of paragraphs No. 2 and No. 4 above relating to fire insurance and the provisions of Section 251 of the Real Property Law construing the same shall apply to the additional insurance required by this paragraph.
11. That in case of a foreclosure sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.
12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. That the mortgagor hereby assigns to the mortgagee the rents, issues and profits of the premises as further security for the payment of said indebtedness, and the mortgagor grants to the mortgagee the right to enter upon and take possession of the premises for the purpose of collecting the same and to let the premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this mortgage is paid. The mortgagee hereby waives the right to enter upon and take possession of said premises for the purpose of collecting said rents, issues and profits, and the mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this mortgage, and agrees to pay such rents, issues and profits in payment of principal and interest becoming due on this mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said premises, but such right of the mortgagor may be revoked by the mortgagee upon any default, on five days' written notice. The mortgagor will not, without the written consent of the mortgagee, receive or collect rent from any tenant of said premises or any part thereof for a period of more than one month in advance, and in the event of any default under this mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of the mortgagor, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.
14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; or (f) if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) after thirty days' notice to the mortgagor, in the event of the passage of any law deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (i) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage or of those contained in the building loan contract hereinafter mentioned.
15. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
16. This mortgage is made pursuant to a certain building loan contract between the mortgagor and the mortgagee dated _____ 19____, and intended to be filed in the office of the Clerk of the County of _____ on or before the date of the recording of this mortgage, and is subject to all the provisions of said contract as if they were fully set forth herein and made part of this mortgage.
17. That the execution of this mortgage has been duly authorized by the board of directors of the mortgagor.

Strike out this
clause 17 if
inapplicable.

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if to read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees" whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me
personally came _____

SS:

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me
personally came _____

SS:

to me known to be the individual _____ described in and who
executed the foregoing instrument, and acknowledged that
executed the same.

to me known to be the individual _____ described in and who
executed the foregoing instrument, and acknowledged that
executed the same.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me
personally came _____

SS:

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me
personally came _____

SS:

to me known, who, being by me duly sworn, did depose and
say that _____ he resides at No. _____

the subscribing witness to the foregoing instrument, with
whom I am personally acquainted, who, being _____ me duly
sworn, did depose and say that _____ he resides at No. _____

that _____ he is the
of _____

that _____ he knows

_____ the corporation described
in and which executed the foregoing instrument; that _____ he
knows the seal of said corporation; that the seal affixed
to said instrument is such corporate seal that it was so
affixed by order of the board of directors of said corporation,
and that _____ he signed his name thereto by like order.

_____ to be the individual
described in and who executed the foregoing instrument;
that _____ he, said subscribing witness, was present and saw
execute the same; and that _____ he, said witness,
at the same time subscribed his name as witness thereto.

Building Loan Mortgage

TITLE NO. _____

TO _____

SECTION _____

BLOCK _____

LOT _____

COUNTY OR TOWN _____

STANDARD FORM OF NEW YORK BOARD OF TITLE INSURERS

Distributed by

**CHICAGO TITLE
INSURANCE COMPANY
HOME TITLE DIVISION**

Recorded as Request of
CHICAGO TITLE INSURANCE COMPANY
HOME TITLE DIVISION
Return by Mail to

Zip No. _____

TRUBIN SILLCOCKS EDELMAN & KNAPP

(Javits Trubin Sillcokes & Edelman)

375 PARK AVENUE

NEW YORK, N.Y. 10022

November 27, 1974

Samuel Kirschenbaum, Esq.
Dreyer and Traub
90 Park Avenue
New York, New York 10016

Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake, Inc.
Coxsackie, New York
Our File No. 26947.001

Dear Mr. Kirschenbaum:

Since I was unable to reach you this week and was advised that you would be out of your office until December 2nd, I am writing at this time to request an early clarification of the position of your client, U.S. Life, with respect to the above matter, which we discussed with you and Mr. Chertowsky at your offices on November 13th.

The position of Diversified Mortgage Investors, whose \$12,000,000 mortgage is insured under the above policy, is that

the mechanics liens filed to date are within the policy coverage and are the responsibility of U.S. Life. For the reasons which we discussed, we feel it would be inadvisable to attempt to foreclose at this time. Rather, entering into reasonable settlements with mechanic lienors would minimize your client's liability. Moreover, the expressed willingness of Safeco to reemploy certain lienors to perform work necessary to complete the project should enhance your ability to effect settlements.

Accordingly, we hereby request that U.S. Life acknowledge its liability under the aforesaid policy with respect to the liens filed to date, as more particularly described in the title report rendered by U.S. Life on October 11, 1974, and further request that U.S. Life immediately undertake to discharge such liens by way of settlement.

In the event we do not receive a prompt reply, we shall find it necessary to deal directly with mechanics lienors in order to minimize liability. The Office of the New York Secretary of State has requested on or before December 16, 1974 a firm program for completion of the project. Inasmuch as this entails dealing with mechanics liens which are the responsibility of your client, we hope you will be able to communicate with us as soon as possible next week.

Very truly yours,

[Sgd] Paul E. Roberts

PER:lw

cc: Edward Chertowsky, Vice President
Lawrence Godofsky, Esq.
Patrick J. Cea, Associate Attorney

44 COURT CALENDAR

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(75-21)

Index No. 6521

Negligence—M.V.

James DeLong
& ano
vs
Gustabo SosaRosenstock &
Turner
Jan. 15, 1975
Hesson, Ford,
Sherwood &
Whaler

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(75-22)

Index No. 7751

Negligence—M.V.

Joseph F. Kirwan
vs
Dorothy H. Scholz
& anoWilliam J.
Schoonmaker
Jan. 17, 1975
Wollerstein &
Futoran

111

(75-23)

Index No. 6396

Negligence—M.V.

Muriel L. Bates
& ano
vs
Lydia K. ThorpeJames T. Viger
Jan. 17, 1975

COURT CALENDAR 45

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(75-24)

Index No. 7757

Negligence—M.V.
(By the Court)Mountain View
Coach Lines,
Inc.
vs
Robert ParishGeorge A. Roland
Jan. 17, 1975

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(75-25)

Index No. 7762

Negligence—Bldg & Sidewalk

Mary E. Matteson
vs
Spinnenweber
Constr. Co., Inc.McGinn, Mulderry
& Buckley
Jan. 20, 1975
Maynard, O'Connor
& Smith

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(75-26)

Index No. 7353

Foreclosure of Mechanic's Lien
(By the Court)George C. Myrick,
etal d/b/a My-
rick & Chevalier
vs
Sleepy Hollow
Lake, Inc., etalTobin & Dempf
Jan. 21, 1975
Dreyer & Traub,
etal

April 22, 1975

Samuel Kirschenbaum, Esq.
Dreyer and Traub
90 Park Avenue
New York, New York 10016

Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. 60070
Sleepy Hollow Lake, Inc.
Coxsackie, New York
Our File No. 26947.001

Dear Mr. Kirschenbaum:

Pursuant to your letter to me of December 4, 1975 and our request to you and U.S. Life Title Insurance Co. dated January 13, 1975 to defend the interest of Diversified Mortgage Investors under the above policy, I forward herewith copies of an order, summons and complaint, and supplemental summons, counterclaim and cross claim, in the pending lien foreclosure action involving this title. Please note that paragraph 17 of the counterclaim and cross claim alleges that the building loan agreement was not recorded. Based on that, priority is claimed over the insured mortgage.

You are hereby requested to appear on behalf of Diversified Mortgage Investors for the purpose of defending their interest, and to undertake the defense of the priority of their lien. Please forward to me copies of all papers which you may serve in the action. We would like to have an opportunity to review any pleadings or motion which you may make.

I think it appropriate for me to refer you to my letters of November 27 and December 26, 1974 advising that because of the failure of U.S. Life Title Insurance Co. to record the building loan agreement it would be necessary to settle with the mechanics lienors. I reiterate such request at this time.

Please sign at the place indicated below on the enclosed copy of this letter and return it to me to acknowledge receipt and the undertaking of U.S. Life Title Insurance Co. to defend the action as requested herein and in my letter of January 13th.

Very truly yours,
Paul E. Roberts

PER:lw
Enclosures

cc: Lawrence Godofsky, Esq.

Edward Chertowsky, Vice President
U.S. Life Title Insurance Co.

Bernard M. Rifkin, Vice President
General Counsel, U.S. Life

ACKNOWLEDGED:

DREYER AND TRAUB

BY.....

DREYER AND TRAUB

90 PARK AVENUE

NEW YORK, N. Y. 10016

(212) 661-8800

April 25th, 1975

Trubin, Sillcock's, Edelman & Knapp Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: Diversified Advisors, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake Inc.
Coxsackie, New York-Your file No. 26947.001

Dear Mr. Roberts:

I received your letter of April 22, 1975 and upon the request of USLIFE Title Insurance Co., please be advised that we will undertake the defense of the action subject to a complete reservation of our client's right to deny liability. It is our intention to resist the claim made by the lienors asserting priority over the mortgage.

Will you please have the mortgagee arrange to meet with me at the earliest moment so that an appropriate answer may be prepared. I would like to have all of the underlying documents

leading up to the making of the mortgage, all correspondence affecting the documents, the evidence of all advances made and any other papers which may be in your client's possession and bear on the issues raised by the pleadings.

If you wish to cooperate with me in the preparation and defense of this action, I will be happy to work with you with the understanding that you will look to your client for the payment of your fees and not to the title company.

Very truly yours,

SAMUEL KIRSCHENBAUM

SK:GP

May 1, 1975

Trubin, Sillcocks, Edelman & Knapps Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake Inc.
Coxsackie, New York-Your file No. 26947.001

Dear Mr. Roberts:

I wrote to you on April 25th, 1975 in which I requested that you arrange to have the mortgagee meet with me and have available at that time all of the papers referred to in my letter of April 25th, 1975.

In your letter of April 22, 1975, you do not state when the

supplemental summons and amended complaint were served upon Diversified Mortgage Investors. I cannot prepare any answer without first reviewing the matter with the mortgagee.

If I assume that your client was served on April 22, 1975, the last day to serve an answer would be May 12th, 1975. It is imperative therefore that this matter receive your immediate attention.

Very truly yours,

SAMUEL KIRSCHENBAUM

SK:GP
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 2nd, 1975

Trubin, Sillocks, Edelman & Knapp Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: Diversified Advisers, Inc.
U.S. Life Title Policy No. A 66070
Sleepy Hollow Lake Inc.
Coxsackie, New York-Your file No. 26947.001

Dear Mr. Roberts:

I did not receive any response to my two prior letters. I called you on the telephone twice today and did not get the courtesy of a return call. I put in a third call to you at approximately 5:40 P.M., at which time I was able to speak with you.

You refused to confirm that your client is prepared to appear for the purpose of providing me with the information requested. You stated that I had given your client "a difficult time" from which I inferred that your client might be of the mind to make it difficult for me to prepare and frame an answer to the various cross-claims.

I advised you that the responsibility of the title company to respond to the pleading started with the submission of the cross-claim which you referred to the title company. We responded promptly and called upon your client through you to furnish us with the essential data to meet the allegations of the pleading. The time for the title company to act commenced with the pleading and the title company has demonstrated its willingness to defend this matter.

In order to prepare an answer in this action we must have the cooperation of your client and we must have it in time for us to prepare an answer within the statutory time limits.

I must have word from you as to whether it is your client's position not to cooperate or whether an early date can be arranged for a meeting with your client at which time I may inquire into the complete transaction so that a defense could be framed.

Very truly yours,

SAMUEL KIRSCHENBAUM

SK:GP
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

TRUBIN SILLCOCKS EDELMAN & KNAPP

375 PARK AVENUE

NEW YORK, N.Y. 10022

(212) Plaza 9-5400

June 5, 1975

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel Kirschenbaum, Esq.
Dreyer & Traub
90 Park Avenue
New York, New York 10016

Re: USLife Title No. A 66070
Myrick & Chevalier v. Sleepy Hollow Lake,
Inc., Diversified Mortgage Investors et al

Dear Mr. Kirschenbaum:

As you requested during your telephone conversation with Denis McCusker of this office yesterday, I am sending you herewith copies of two further cross-claims which we received relating to the above-referenced matter. These documents were originally mailed to an incorrect address in Boston, forwarded to another address in Boston, mailed to the offices of Diversified Mortgage Investors in Florida and finally received by us this week. As a result, the effective date of service is not clear.

Since our client has found it necessary to commence litigation

against USLife Title with respect to its rights to defend in the above-referenced action, we request that you seek an extension of time to answer in the matter until the rights of our client and your client have been determined.

We understand that you already have filed an answer in one of the related suits. Please send us a copy thereof.

As you requested, we have asked Diversified Mortgage Investors to forward to you the mortgage documents which are the subject of USLife's title insurance policy issued to our client which we assume you have received. Please advise if you require any further information. Officers of Diversified Mortgage Investors will be in New York early next week and can meet with you if you wish.

Very truly yours.

[Sgd] Paul E. Roberts

PER:lw

Enclosures

cc: Lawrence Godofsky, Esq.

Bernard M. Rifkin, Vice President
U.S. Life Title Insurance Co.

DIVERSIFIED MORTGAGE INVESTORS

82 DEVONSHIRE STREET
BOSTON, MASSACHUSETTS 02109

(617) 426-4600

June 9, 1975

Samuel Kirschenbaum, Esq.
Dreyer & Traub
90 Park Avenue
New York, New York 10016

Re: DMI Control 2222—Sleepy Hollow Lakes

Dear Mr. Kirschenbaum:

At your request and pursuant to your prior telephone conversation with Dan Kusic, I enclose copies of the Notes, Mortgages and Agreements respecting the Sleepy Hollow Lakes loan. Please advise me if you require any further information. Dan will be in New York this week and will, if you wish, arrange to meet with you to discuss our defense against the Mechanics Lien claim in this case.

Sincerely,

[Sgd] LAWRENCE GODOFSKY
Vice President & General Counsel

LG:msa
Enc.

cc: Dan Kusic

DREYER AND TRAUB

90 PARK AVENUE

NEW YORK, N.Y. 10016

(212) 661-8800

June 11, 1975

Trubin, Sillcocks, Edelman & Knapp Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: USLife Title No. A 66070
Myrick & Chevalier v. Sleepy Hollow Lake, Inc.,
Diversified Mortgage Investors et al.

Dear Mr. Roberts:

I again refer you to the prior correspondence which I sent to you demanding the appearance of those persons familiar with the facts and circumstances together with all of the underlying documents, correspondence and memoranda relating to your client's interest in Sleepy Hollow Lake, Inc. As of this writing, and only after I made it clear to you and your client that the title company considers the action of your client and of your office to constitute a wilful and avowed obstruction in the defense of the action that you prevailed upon your client to forward some papers to me, and that both you and your client stated that a representative will be in New York this week able to meet with me to "discuss the defense".

The xerox copies of paper submitted to me which I received this morning are incomplete and do not begin to disclose the transaction between Diversified and Sleepy Hollow which led up to the loan agreement of September 28th, 1971, and the subsequent mortgages which are disclosed in the pleadings. I again insist that a representative familiar with the facts who will have in his possession all of the underlying documents and all of the correspondence with all parties connected with this transaction arrange an immediate appointment with me so that I may begin to find out what actually transpired so that these liens may be opposed properly.

I am far from being convinced that there ever was a building loan transaction.

Insofar as the state action is concerned, I had to interpose answers lest defaults be obtained. I have demurred bills of particulars to which motions were made for protective orders. I must understand the facts so that I can determine to what extent discovery proceedings must be held or what other actions or cross-claims or impleader complaints must be set forth.

I trust that I will have an immediate response to this request and a satisfactory mutual appointment arranged. I too have a busy schedule and I must have some advance notice of an appropriate date.

Very truly yours,
SAMUEL KIRSCHENBAUM

SK:GP
BY HAND

TRUBIN SILLCOCKS EDELMAN & KNAPP

375 PARK AVENUE

NEW YORK, N.Y. 10022

(212) Plaza 9-5400

June 11, 1975

Samuel Kirschenbaum, Esq.
Dreyer and Traub
90 Park Avenue
New York, New York 10016

Re: USLife Title No. A 66070
Diversified Mortgage Investors
Sleepy Hollow Lake, Inc.

Dear Mr. Kirschenbaum:

This will confirm our discussion this afternoon by telephone with respect to your letter of June 11, 1975 and your request for documents respecting this matter and an opportunity to speak with officers of our client, Diversified Mortgage Investors, having knowledge of the facts.

We advised you last week that such officers would be available in New York early this week and requested an appointment with you at your convenience. We advised you today that Mr. Kusic from Diversified Mortgage Investors is here at this time and was free to come over and meet with you immediately. We further advised you that the documents supplied to you by Diversified Mortgage Investors were to our knowledge the appropriate loan documents you had requested. We further advised you that the

complete files with respect to this matter filled several filing cabinets and could not conveniently be transported to New York for your examination. Therefore, we offered to duplicate and provide you with any particular documents you could identify and offered to make relevant files available to you at the offices of Diversified Mortgage Investors in Coral Gables. We await advise from you as to when you or someone from your office or your client's office would like to make such an inspection of files and when and where you would like to meet with persons having knowledge of the loan.

During the course of our discussion you advised me that you have put in answers on behalf of Diversified Mortgage Investors with respect to cross-claims made by mechanics lienors. As previously requested, would you please provide us with copies of all such documents, any bill of particulars or interrogatories, and any other judicial papers which you have filed on behalf of Diversified Mortgage Investors.

Very truly yours,

[Sgd] Paul E. Roberts

PER:lw

DREYER AND TRAUB

90 PARK AVENUE

NEW YORK, N.Y. 10016

June 18th, 1975

Trubin, Sillcocks, Edelman & Knapp Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: USLIFE Title No. A66070
Diversified Mortgage Investors
Sleepy Hollow Lake, Inc.

Dear Mr. Roberts:

In our last conversation I advised you that I would be happy to examine any officer of Diversified familiar with the facts and examine all of the records of your client pertaining to their participation in financing with Sleepy Hollow Lake, Inc. I advised you that I had to make time arrangements in order to examine your client and could not be expected to speak with your client at an unexpected hour chosen by you.

You kept insisting that I should describe to you what particular papers or documents I am interested in looking at. I tried to point out to you the absurdity of such a request, since it assumed that I have knowledge of your client's records. When you advised me that the records were too voluminous to be brought to my office, I agreed to go to where the records were kept. I was told that the records were kept at Coral Gables, Florida, and I agreed to make arrangements to go to Coral Gables for that purpose.

I tried to reach you on the telephone on June 12th, 1975. Your secretary advised me that you were in conference, and you would call me back. You did not return my call, and I thereafter called Mr. Kusic in Coral Gables to arrange a mutually satisfactory time for the examination of the records, and to interview such officer who would have knowledge of the facts. Dan Kusic advised me that he was with Diversified for a very short period of time and that he would not have any personal knowledge of any of the facts relating to the loan transactions affecting Sleepy Hollow Lake, Inc. other than from the records of Diversified. He further advised me that the files did not take up four filing cabinets, but was more in the area of four folders.

I advised Mr. Kusic that I together with a title company representative and a representative of the firm appearing in the Federal Court action will appear at his office Friday morning, June 20th, 1975 and he agreed to make the records available to me the first thing in the morning.

I arranged my affairs so that I would be able to be in Florida the evening of the 19th so that I could attend at the office of Diversified on the morning of the 20th. Arrangements were made with the airline for the trip.

I received your telephone call today which I might say was not unexpected since it seems to be running true to your form to wilfully and avowedly obstruct the title company in obtaining all of the facts surrounding the making of the loan and the issuance of the title policy and the subsequent transactions with Sleepy Hollow Lake, Inc., and we are advising the title company that in our judgment there appears to be a definite effort on the part of Diversified to refuse to cooperate.

I am sure that you could have discussed the question of the examination of the records prior to today. I made it clear to you when I spoke with you before making the arrangements that we want to examine all of the records before arranging for an answer to be interposed in the Federal Court action. You agreed to adjourn the Federal Court action to the 27th of June, 1975, and therefore I had to make arrangements to examine the records in

sufficient time before that date whether I was to appear or whether the title company would arrange to have other counsel appear in the Federal Court action. When your messenger delivered the stipulation in the Federal Court action extending the time to answer I was in consultation with Jesse Levine of the firm of Shaw & Levine who had been retained to appear in the Federal Court action. The name of the firm representing USLIFE in the Federal Court action was therefore changed from Dreyer and Traub to Shaw & Levine, and the stipulation was signed by Jesse Levine. Your messenger insisted on taking the original stipulation back to your office even though the usual is for the defendant to submit the stipulation for approval to the Federal Court in order to assure the granting of the extension. Your messenger insisted that the original had to be returned to your office and reliance was placed upon your letter of transmittal in which you agreed to have the original stipulation "so ordered" by the Court.

Under the circumstances I will insist that your client arrange to ship all of the documents and records including all of their correspondence pertaining to this loan, their records pertaining to the books of account and other papers in their possession which pertain to the Sleepy Hollow Lake, Inc. transaction, and make those records available to me in New York within the next seven days.

I again must emphasize that the loan documents which you previously supplied do not constitute all of the records which I wish to examine.

Very truly yours,

DREYER AND TRAUB

BY.....

SAMUEL KIRSCHENBAUM

SK:GP
BY HAND

TRUBIN SILLCOCKS EDELMAN & KNAPP

375 PARK AVENUE

NEW YORK, N.Y. 10022

(212) Plaza 9-5400

June 18, 1975

Samuel Kirschenbaum, Esq.
Dreyer & Traub
90 Park Avenue
New York, New York 10016

Re: Sleepy Hollow Lake, Inc.
Our File No. 26947.001

Dear Mr. Kirschenbaum:

This will confirm our telephone conversation this afternoon and the fact that Diversified Mortgage Investors remains willing to make available to you whatever facts, documents and personnel are necessary to assist you with the defense of the mechanics lien action in which priority has been asserted over Diversified Mortgage Investors' mortgage at the Sleepy Hollow Lake project.

As you know, Mr. Kusic was in New York and available for you to meet with last week. Mr. Godofsky, General Counsel for Diversified Mortgage Investors, will be in New York next week on Thursday and Friday and will be available to meet with you at that time. As you also are aware, copies of relevant mortgage documents have been forwarded to you.

If there are other documents which you need relating to defending the interest of Diversified Mortgage Investors in the mechanics lien action, please advise me what you need and Mr. Godofsky will either bring it will him next week or mail copies to you prior to that time.

Very truly yours,

[Sgd] Paul E. Roberts

PER:lw

DREYER AND TRAUB

90 PARK AVENUE

NEW YORK, N.Y. 10016

(212) 661-8800

June 19th, 1975

Trubin, Sillcocks, Edelman & Knapps Esqs.
375 Park Avenue
New York, New York 10022

Attention: Paul E. Roberts Esq.
Re: USLIFE Title No. A66070
Diversified Mortgage Investors
Sleepy Hollow Lake, Inc.

Dear Mr. Roberts:

Your constant references in your letters that Diversified Mortgage Investors remains willing to cooperate is not supported by the conduct of either your client or yourself. I so characterized your remarks on the telephone yesterday, but perhaps in a stronger fashion.

I shall expect an officer of Diversified Mortgage Investors familiar with the facts at my office on Thursday, June 26th, 1975 at 10:30 A. M. He is to produce the records pertainign to Sleepy Hollow Lake, Inc. beginning with the first memorandum for financing from any source whatsoever including all correspondence to anyone representing the borrower or the owner or any other person or persons interested in the transaction. The cross-claims makes reference to additional mortgages placed on the property by Diversified and I will require

not only copies of the mortgages which are of record but of all the records pertaining or relating to those mortgages including any records with the participants in those mortgages. I will also require the records of account showing how and when monies were advanced, and how and when monies were received, and any and all copies of memoranda, documents, correspondence and any other records made from the time of the inception of the deal to and including the institution of the action.

I again repeat what I said in part yesterday. Mr. Kusic is not familiar with the facts and circumstances since he joined Diversified only very recently. He did not have with him any of the records and this was admitted by you and Mr. Kusic. Your offer to have Mr. Kusic meet with me was a telephone call to the effect that he was available at the instant and could come over forthwith without consideration and regard for my time schedule or arranging a mutually satisfactory date.

In my judgment your client's responsibility to disclose all of the facts, and I again emphasize "all" goes beyond this idle gesture.

I further wish to advise you that I intend to take the statement of anyone who is presented under oath, and to make a thorough and complete record of the interview so that there will be no mistake as to what was asked or what was said.

If Mr. Godofsky or any officer does not have all of the facts in his personal knowledge, I ask that you produce the person or persons who have such knowledge and please do not ask me to advise you of the names of those persons.

Very truly yours,

DREYER AND TRAUB

[Sgd]

SAMUEL

KIR-

SCHENBAUM

SK:GP
BY HAND

June 25, 1975

BY HAND

Trubin Sillcocks Edelman & Knapp
375 Park Avenue
New York, New York 10022

Re: Diversified Mortgage Investors

Att: Paul Roberts, Esq.

Dear Mr. Roberts:

My office received a telephone call from your office yesterday advising me that you will not produce an officer of Diversified Mortgage Investors, together with the records, at my office on Thursday, June 26th, which date was offered by you as a convenient date for the disclosure. The message give to me was that Diversified will appear at my office on Friday, June 27, 1975.

It has come to my attention that while you were thus far successfully frustrating my efforts to review the files of your client and discuss the matter with an officer familiar with the facts, you were able to have your client in New York for the purpose of preparing your client's action in the Federal Court. This conduct is not consistent with your expressions of cooperation.

I will expect your client on June 27, 1975 at 10 A.M., together with all of the records which were requested.

Very truly yours,

Samuel Kirschenbaum

SK:mu

130

TRUBIN SILLCOCKS EDELMAN & KNAPP

375 PARK AVENUE

NEW YORK, N. Y. 10022

(212) Plaza 9-5400

June 25, 1975

HAND DELIVERY

Samuel Kirschenbaum, Esq.
Dreyer & Traub
90 Park Avenue
New York, New York 10016

Dear Mr. Kirschenbaum:

In view of the motion which is pending in the suit by DMI against U.S. Life, which is expected to promptly resolve the question whether DMI may conduct the defense of the mechanics lienors' foreclosure suit without waiving rights under its title policy, we feel that it is appropriate that representatives of DMI not meet with you to discuss the foreclosure suit at this time.

Very truly yours,

[Sgd] Paul E. Roberts

PER:lw

June 26, 1975

Trubin Sillcock, Edelman & Knapp
375 Park Avenue
New York, New York

Att: Paul E. Roberts, Esq.

Re: Diversified Mortgage Investors

Dear Mr. Roberts:

Your letter of June 25, 1975 is an admission of your client's refusal to cooperate with the title company in the defense of claims asserted by the mechanic's lienors. The prosecution of the action in the Federal Court does not give your client the right to refuse to cooperate or take positions contrary to the facts in order to attempt to attempt to foist upon the title company the obligations which are not contained within the policy and which are not due and owing to your client.

I will request counsel handling the action in the United States District Court to assert therein that even if the title company had any obligation to defend under the policy and in accordance with the terms of the policy, that it should be relieved from doing so because of your client's conduct.

Very truly yours,

Samuel Kirschenbaum

SK:mu

PLAINTIFF'S REBUTTAL AFFIDAVIT

[TITLE]

STATE OF FLORIDA)

COUNTY OF DATE)

BERNIE O. SNODDY, being duly sworn, deposes and says:

1. I am the Managing Trustee of the Plaintiff, Diversified Mortgage Investors ("DMI"), a publicly held Massachusetts real estate investment trust, and am familiar with the complaint and the subject matter in the action. I make this affidavit in support of this application and in order to correct some misleading assertions and inaccuracies set forth in the opposing papers.

2. First, I should note that the papers in opposition to the motion do not dispute that DMI faces irreparable injury, and they neither deny nor respond to the fact that U.S. Life Title Insurance Company of New York ("USLife") negligently failed to file of record the building loan agreement required by New York Law. Rather, in desperation, they argue that the building loan agreement which they neglected to record was not necessary for this Loan, because the loan was not a building loan; or if it was a building loan they were defrauded by DMI.

3. Before dealing with this extraneous issue which the opposing memorandum characterizes as the "basic question involved" (defendant's memorandum of law page 1), I should note that such issue constitutes a second justiciable controversy between the parties: whether the insured loan is a building loan under New York law requiring the filing of a loan agreement with the County Clerk. The first and real issue is whether under the circumstances presented, the obligations of USLife under the policy require it to dispose of liens at this time, or to permit DMI to do so. In order to avoid irreparable injury to DMI it is necessary for both issues to be resolved immediately by this Court.

4. As hereinafter demonstrated inasmuch as USLife itself

required a building loan agreement to comply with the New York Lien Law; was advised of the terms of the Loan; and itself made disbursements for work performed, I find the basis for opposition to this application grossly misleading to the Court.

5. It should be noted that the statement in paragraph 12 of the Chertowsky affidavit in opposition that the loan agreement was not submitted to USLife at the time its commitment to insure was issued (upon the closing on 9/28/71) is devious and misleading, inasmuch as such agreement was in fact provided to USLife prior to issuance of the Policy; and the assertion of USLife that if the loan is a building loan a fraud has been perpetrated upon them by DMI is, therefore, wholly without foundation. The weakness of the position of USLife is highlighted by the fact that during the several conferences and discussions which we held with USLife prior to commencement of this action, at which various means of dealing with the mechanics' liens were explored, USLife never once advanced the theory it here urges upon the Court. Clearly such theory is an invention of necessity. On March 1, 1972, before the policy of insurance in question (the "Policy") was issued, USLife requested that the parties enter into a building loan agreement in statutory form, and also that the mortgage be modified, affidavits be provided respecting the mortgage tax, and that lien waivers be obtained from existing contractors. USLife apologized for the inconvenience; stated that no additional expenses would be incurred; and specifically assured DMI that the additional instruments would not adversely affect the priority of the Mortgage. (See Exhibit "A") A building loan agreement was entered into and, after some delay which I believe was occasioned by obtaining the requested lien waivers, forwarded to USLife on May 9, 1972 for filing with the clerk of Greene County. (See Exhibit "B") Subsequently, and after numerous requests, the title policy was issued. (See Exhibit "C") For some reason, however, USLife never filed the building loan agreement of record.

6. In its effort to support the argument that the loan is not a

building loan, USLife has sought to ignore certain of the relevant loan documents. The Loan described in the complaint and which is the subject of this application is a \$12,000,000 mortgage loan, not \$5,000,000 as USLife asserts. The initial disbursement made by DMI was for acquisition of the land, payment of existing mortgages, engineering costs, and other expenses, and was in the amount of \$2,636,601 (not \$5,000,000 as USLife asserts). The Loan was made for the purpose of acquiring and developing the Sleepy Hollow Lake property as a land sales development, and the borrower was required to construct a dam for the largest artificial lake in New York State; roads, water and sewerage treatment plants; a clubhouse; equestrian facilities; campgrounds, etc. The \$12,000,000 Loan which was closed on September 28, 1971 contemplated by its terms having another lender participate in the Loan by advancing funds for major portions of construction work. Another real estate, investment trust, Continental Mortgage Investors ("CMI"), agreed to participate in the \$12,000,000 Loan for the purpose of making construction advances for certain improvements, and on April 10, 1972 entered into a participation agreement with DMI and a loan agreement with the borrower. The advances of CMI were secured by the same \$12,000,000 mortgage insured by USLife. USLife was advised of the arrangement prior to issuance of the Policy to DMI, and issued an endorsement insuring the interest of CMI under the Loan. A copy of such endorsement is annexed hereto as Exhibit "D". Thus the mortgage loan under inquiry is the loan as modified for the participation of CMI, which fact was known to and insured by USLife. The relief sought on this application is on behalf of both DMI and CMI, and DMI is acting in accordance with the participation agreement and as the sole mortgagee of record in asserting this claim.

7. With respect to the nature of the Loan, I have been advised by our counsel that a building loan agreement clearly was required. Construction advances were conditioned upon the performance of work and the borrower was obligated in the loan documents to perform substantial construction work; the lenders had the right to disburse funds directly to mechanic's lienors;

and the borrower was obligated to employ loan funds solely for specified categories of construction work at the project. In light of such provisions, our counsel has advised that as a matter of law a building loan agreement was required.

8. From the foregoing provisions of the loan documents, as well as from the prior requirement of a building loan agreement imposed by USLife, it is apparent that the loan is a building loan and that the building loan agreement transmitted to USLife should have been recorded. The expressed desire of USLife to futilely litigate with mechanic's lienors whether a building loan agreement was required is motivated not by any belief that they have even a chance to prevail at trial, but rather because they know that DMI must act quickly to clear the liens and go forward with construction, or the entire project will be lost. USLife is hopeful that if they delay longer, DMI shall have to take such action unilaterally and thereby lose the benefits of insurance under the Policy. USLife cannot be permitted so callously to prejudice the interests of its insured, particularly when it attempts to conduct such a losing defense with a complete reservation of rights as to DMI. USLife should be required either to immediately discharge the liens, or to permit DMI to defend its own interest in this vitally important matter by entering into settlements with the lienors.

9. The opposing papers suggest that there is less than \$7,000,000 outstanding under the insured loan, because in December of 1973 DMI's interest in the loan had been reduced to \$900,000. In making this assertion USLife attempts to ignore the insured interest of CMI in the loan. As residential home site lots were developed and sold to purchasers the proceeds were paid to DMI in reduction of its outstanding balance from time to time; and as further development work was performed, additional funds were readvanced by DMI to the borrower. This arrangement was specifically approved and agreed to by USLife. (See the 9/28/71 letter annexed as Exhibit "A" to my affidavit of 6/19/75.) The advances of CMI and DMI, plus the readvances of DMI subsequent to December of 1973, comprise the more

than \$7,100,000 and interest now outstanding under the insured loan.

10. The opposing papers make several other assertions which should be clarified. The bonds which were issued on this project were statutory bonds required by the Secretary of State and the municipalities, as opposed to usual performance and payment bonds. Neither CMI nor DMI are obligees under such bonds and therefore are not in a position to enforce them. Moreover, I have been advised that such bonds fail to cover all of the work and it is unclear whether they cover mechanic's liens at all. USLife seeks to shift to another party its own obligations.

11. Mention of the possibility of rehiring mechanic's lienors was made by DMI in the context of proposing to reduce the liability of USLife in the course of a cooperative settlement effort, on the assumption that if lien holders were getting more work and a guarantee of payment, existing lien settlements could more easily be achieved. Defendant attempts to distort this into an effort by DMI to have USLife assume a responsibility unrelated to the Policy for the purpose of retaining essential contractors. In this economy there is an abundant supply of contractors and none of the existing lienors are necessary to completion of the project.

12. USLife has suggested in its opposing memorandum of law (page 20) that it would be acceptable for DMI to bond the liens, but not for DMI to settle the liens, because USLife fears that DMI will be over generous in dealing with lienors. Bonding liens requires cash or equivalent collateral in the amount of approximately 110% of the face amount of the liens. As stated in my affidavit of June 19, 1975 (paragraph 15), DMI is in serious financial condition. To provide collateral for such bonds, which bonds exceed in face amount \$1,600,000, would tie up essentially needed capital for DMI. Inasmuch as DMI is confident that the liens can be settled for less than the face amount thereof, and further is willing to bear the risk of scrutiny at the trial of this matter as to whether liens paid by DMI were legally effective and filed with respect to funds due and owing, it is

respectfully suggested that DMI should not be required to bond these liens, which, of course, are the obligations of USLife under the policy. If USLife wishes the liens to be bonded at a greater cost, rather than settled at a lesser cost, it may do so itself. Inasmuch as the negligence of USLife in failing to record the building loan agreement has deprived DMI of its ability effectively to foreclosure and clear liens, it is appropriate that USLife bear the burden of obtaining any bond.

The Kirschenbaum affidavit seems to attempt to build a self-serving defense under the Policy that DMI has refused to cooperate in the mechanics lien action had has prevented the defense thereof. This is amusing, since it is USLife which is refusing to take proper action to deal with the lienors. At Mr. Kirschenbaum's invitation Lawrence Godofsky, our vice president and general counsel, and Paul E. Roberts, our New York counsel, appeared at Mr. Kirschenbaum's office on June 27, 1975 and Mr. Kirschenbaum refused to see them. Suffice it to say that notwithstanding a fundamental disagreement over how the action should be conducted and the repeated refusal of Mr. Kirschenbaum to provide us with copies of the pleadings to date of DMI has cooperated with USLife and has provided copies of the loan documents and data regarding outstanding advances under the loan. The manner in which Mr. Kirschenbaum is defending the interests of DMI is illustrated by the fact that our first advice as to his theory of defense (that a recorded building loan agreement is not required) was received by service of the papers in opposition to this application.

[Sgd] BERNIE O. SNODDY

SWORN TO BEFORE ME THIS
30th DAY OF JUNE 1975.

[Sgd] Marcia S. Argintar
Notary Public
State of Florida at Large
Commission Expires 12/15/76
90 State Street
Albany NY 12207
518 472-9161

USLIFE TITLE INSURANCY COMPANY of New York

March 1, 1972

Jeremiah F. Manning, Esq.
75 State Street
Albany, New York

Re: Sleepy Hollow Lake, Inc.

Dear Mr. Manning:

Enclosed is a copy of the mortgage to Diversified Mortgage Investors, recorded in Liber 389 Mp. 386 on September 27, 1971. I have had several conversations with our New York Office with regard to this mortgage resulting in the following determinations:

1. A corrected mortgage should be executed naming as to the mortgagee a trustee or trustees of the trust as such trustee or trustees.
2. A building loan agreement should be filed simultaneously with the correction mortgage.
3. Duplicate affidavits of no mortgage tax should be executed and filed with the corrected mortgage, (Section 255 tax law).
4. An affidavit by an officer of the mortgagor setting forth the names of all contractors and subcontractors with whom there are outstanding commitments in connection with this title to be provided to the Company.
5. Lien waivers from all contractors and subcontractors disclosed in the above affidavit to be provided to the Company.
6. An affidavit setting forth the actual amount of work done on the premises and by whom to date. (This presumably could be included in the above affidavit.)

The above should resolve the difficulties concerning the mortgage. We regret the inconvenience this has caused and will

assist in any way we can. Should you have any questions, please do not hesitate to call. If the above meets with your approval, the Company will contact the mortgagee for their approval.

Very truly yours,

[Sgd] Francis W. Landry
Vice President

FWL:pn

cc: Edward Chertowsky, Assistant Vice President
USLIFE Title Insurance Company of New York

March 30, 1972

Barry Seidal, Esq.
Diversified Mortgage Investors
P. O. Box 2195
Coral Gables, Florida 33134

Re: Sleepy Hollow Lake, Inc.
TC # 16

Dear Barry:

Pursuant to our last telephone conversation I am enclosing the various forms requested by you.

Rest assured that execution of the corrective mortgage will in no way constitute a waiver of insurance presently in force, nor will said execution of the corrective mortgage in any way impair same.

You are hereby further advised that Diversified Mortgage Investors and the borrower will not be held liable for additional expense incurred in the preparation and recording of the corrective mortgage.

I am enclosing two sets of Xerox material relating to Building Loan Contracts and the New York State Lien Law which may be of some interest to you. As yet I have not received copies of the loan agreement that Mr. Robinson and you have promised me.

Very truly yours,

[Sgd] Edward Chertowsky
Assistant Vice President

EC:jmb

Enc.

CC: Frank Landry
90 State Street
Albany, N.Y. 11207
518-472-9161

Florida address:
P.O. Box 2195
Coral Gables, Fla. 33134

May 9, 1972

Mr. Edward Chertowsky
Assistant Vice President
USLIFE Title Insurance Company of N.Y.
125 Maiden Lane
New York, N.Y. 10038

Re: Sleepy Hollow Lake, Inc.
DMI Control No. 2222
TC # 16

Dear Mr. Chertowsky:

In furtherance of your letter of March 30, 1972 to Barry G. Seidel of Gribben, Swann & Glass, and my additional conversation with Frank Landry in Albany, I am enclosing copies of the documents you requested in connection with the proposed corrective mortgage filing.

Enclosed you will find the corrected mortgage instrument which is in all respects a duplicate of the one filed on September 29, 1971, except for the designation of Durand A. Holladay as the Mortgage in lieu of Diversified Mortgage Investors. In addition I am enclosing an affidavit prepared and executed by me for the purpose of clearing any additional tax liability in recording the instrument.

If these documents meet with your approval they should be forwarded to Frank Landry for filing after he has obtained the execution of the corrective mortgage by Steve Fair of Sleepy Hollow Lake, Inc.

Pursuant to your request I am also enclosing a copy of the

original Loan Agreement dated September 28, 1971, and the Modification of Loan Agreement dated January 10, 1972 covering this particular Loan and Mortgage. At this point I will assume that the instrument copies will be sufficient for the New York State Lien and Law requirements. However, if you need anything in addition to this please forward your specific request in writing to me for further handling.

Frank Landry has advised that he will obtain directly from Sleepy Hollow Lake, Inc. the additional affidavits and lien and waivers.

Since I do not believe DMI has ever received a title insurance policy, I would appreciate if you would look into this matter promptly and see that a final title insurance policy is issued. If you have any questions which you would like us to discuss please call me at the office of Diversified Advisers, Inc. (Telephone No. Area Code 305 667-6417).

Sincerely,

[Sgd] James E. Zinchak

JEZ/ib.

Encls.

cc.: Mr. Frank Landry

GRIBBEN, SWANN & GLASS

August 23, 1972

Mr. Ed Shertowsky
U.S. Life Title and Insurance Company of New York
90 State Street
Albany, New York 12207

Re: Sleepy Hollow Lake, Inc.
Loans for \$12,000,000.00
and \$5,000,000.00
Title Policy #A66070

Dear Mr. Shertowsky:

Our client, Diversified Mortgage Investors, has been trying to obtain the final policy of title insurance with respect to the above captioned matter for quite some time. Apparently a lady by the name of Paris Northrup with your company advised a representative of Diversified that the policy could be issued in final form subject only to a "pending disbursements clause".

Inasmuch as a considerable amount of time has elapsed since the closing of this loan, it would be greatly appreciated if you could give this matter some priority treatment by forwarding the final policy of title insurance to my attention without delay.

Should there be any reason or problem preventing this from occurring kindly advise me of the nature of the difficulty and the reason why the policy cannot be issued.

Very truly yours,

GRIBBEN, SWANN & GLASS

[Sgd] Robert A. Vale

RAV/ms

cc:

Mr. Jim Zinchak
Mr. Chuch DeKold
Linda Reed

August 29, 1972

Mr. Robert A. Vale
Gribben, Swann & Glass
5915 Ponce De Leon Boulevard
Suite 601
Coral Gables, Florida 33146

Re: Sleepy Hollow Lake, Inc.
Loans for \$12,000,000.00 and
\$5,000,000.00
Title Policy #A66070
Title #TC 16

Dear Mr. Vale:

Your letter dated August 23, 1972 is hereby acknowledged. I
have directed our Albany office to issue policy in this matter.

Very truly yours,

[Sgd] E.C.
Assistant Vice President

lj

cc: James E. Zinchak, Esq.
Frost & Jacobs
Frank Landry, Albany Office
Pete Cox, Albany Office

Endorsement

Attached to and made a part of USLIFE TITLE INSURANCE
COMPANY of New York

Policy No. A-66070

Said policy is hereby amended as follows:

The name of the insureds is hereby changed as follows:

Diversified Mortgage Investors, a Massachusetts
Business Trust, and Continental Mortgage Investors, a
Massachusetts Business Trust, as their interests may
appear.

Nothing herein contained shall be construed as ex-
tending or changing the effective date of said policy,
unless otherwise expressly stated.

Signed and sealed this 20th day of March 1973

By

[Sgd] Stanton S. Roller
President

Attest:

John A. Albert
Secretary

Countersigned

Edward Chertowsky
Agent

EXHIBIT "G"

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SUMMONS

(SAME TITLE)

To the above named Defendant:

You are hereby summoned and required to serve upon TRUBIN SILLCOCKS EDELMAN & KNAPP plaintiff's attorney, whose address is 375 Park Avenue, New York, New York 10022 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/Raymond P. Burhardt
Clerk of the Court

s/E.A. Bedan
Deputy Clerk

Date: May 22, 1975

COMPLAINT

(SAME TITLE)

Plaintiff, complaining of the Defendant by its attorneys, **TURBIN SILLCOCKS EDELMAN & KNAPP**, respectfully alleges as follows:

1. This is an action for a declaratory judgment pursuant to 28 U.S.C. Section 2201 for the purpose of determining questions of actual controversy between the parties, and for other relief as hereinafter more fully appears, in a matter exceeding the sum of Ten Thousand (\$10,000) Dollars, exclusive of interest and costs. Jurisdiction of this Court is further predicated upon diversity of citizenship of these parties under 28 U.S.C. §1332.

2. Plaintiff **DIVERSIFIED MORTGAGE INVESTORS** is a publicly owned real estate investment trust organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Massachusetts. It is engaged in the business, inter alia, of lending money to real estate developers.

3. Upon information and belief, Defendant **USLIFE TITLE INSURANCE COMPANY OF NEW YORK** is a successor to Inter-County Title Guaranty and Mortgage Company and Inter-County Title Company and is a title insurance company organized and existing under the laws of the State of New York with its principal place of business in the State of New York.

4. During September of 1971, Plaintiff agreed to lend \$12,000,000 to Sleepy Hollow Lake, Inc., a New York corporation, for the acquisition of approximately 2,000 acres of land in Greene County, New York, in the Towns of Athens and Coxsackie (the "Property"), and for the two-phase development of the Property as a land sales project having an artificial lake, roads, sewage and water treatment plants, a clubhouse, equestrian and other facilities (the Property and land sales development hereinafter collectively referred to as the "Project"). Another real estate investment trust, Continental Mortgage Investors, agreed to participate with Plaintiff in

making construction portions of said loan. Said \$12,000,000 loan, as same was increased and modified, is hereinafter referred to as the "Capital Loan".

5. An essential inducement to Plaintiff's willingness to make the Capital Loan was the development of the Project for land sales purposes, which greatly increased land value.

6. The Capital Loan was secured by a first mortgage on the Property (the "Mortgage").

7. To insure the first lien priority of advances under the Mortgage, Plaintiff obtained title insurance from Defendant, which was issued pursuant to letter agreement with Defendant dated September 28, 1971 and insured under Policy No. A 66070 (collectively the "Policy"). Said Policy was in the initial amount of \$5,000,000, with provision for increase in coverage, up to the amount of the Capital Loan, should advances exceed said sum.

8. Plaintiff employed Defendant to file and record instruments as required by applicable New York law.

9. Under the terms of the Policy, Defendant was required to take all steps necessary to obtain first lien priority for advances under the Mortgage before releasing funds to the borrower.

10. Advances were made under the Mortgage commencing on September 28, 1971.

11. As of December 31, 1974, there was advanced under the Capital Loan \$7,182,089.37 in principal, none of which has been repaid.

12. Construction of the first phase of the Project is approximately 80% complete.

13. Approximately 1,200 residential lots in the first phase have been sold to individual purchasers, the majority of whom are residents of New York State.

14. The Project was filed as a land sales project with the New York Secretary of State pursuant to applicable regulations.

15. The land sales offering statement required completion of

most of the work for the first phase of the Project by March 24, 1974.

16. The borrower, Sleepy Hollow Lake, Inc., failed to meet such completion date and defaulted on the Capital Loan and its obligations under the Mortgage.

17. Mechanics liens have been filed against the Project totaling approximately \$1,811,000 in face amount.

AS AND FOR A FIRST CLAIM FOR RELIEF

18. In connection with the Capital Loan, and at the request of Defendant, Plaintiff and the borrower executed a building loan agreement and same was forwarded to Defendant for filing with the Clerk of Greene County.

19. Defendant held itself out to Plaintiff as being diligent and competent in the business of recording, filing and perfecting the liens of title documents, and in performing services in connection with the Mortgage, and agreed to perform such services on behalf of Plaintiff, including the filing of the building loan agreement with the Clerk of Greene County.

20. In reliance upon the diligence and competence of Defendant in performing the aforesaid services, Plaintiff thereafter made advances under the Capital Loan.

21. Defendant negligently failed to perform its obligation to file the building loan agreement.

22. Such filing was required by Section 22 of the New York Lien Law in order for construction loan advances to have priority over mechanics liens.

23. As a result of said negligence of Defendant, on information and belief construction advances under the Mortgage were and are subordinate to the mechanics liens which have been filed.

24. As a result of said negligence, Plaintiff is unable to eliminate the mechanics liens by foreclosure of its Mortgage.

25. Plaintiff has requested that Defendant pay, settle, bond or discharge all mechanics liens.

26. Defendant has failed and refused to take such action.

AS AND FOR A SECOND CLAIM FOR RELIEF

27. Plaintiff repeats and realleges paragraphs 1-26 as if they were fully set forth herein.

28. Plaintiff obtained title insurance from Defendant for protection against the very situation which has arisen; the filing of mechanics liens creating a cloud on title and interfering with performance of construction. The policy imposes a relationship upon the parties which requires Defendant to act in good faith in defending the interest of Plaintiff and in restoring the priority of the Mortgage.

29. Certain of the aforesaid mechanics lienors have instituted a lien foreclosure proceeding in which priority is claimed over Plaintiff's Mortgage by reason of the failure to record the building loan agreement.

30. Because of the failure of Defendant to record the building loan agreement, on information and belief, Plaintiff is without legal defense to the claims of mechanics lienors to priority over advances made for construction under the Mortgage.

31. Insuring the Mortgage and defending the interests of Plaintiff in good faith under these circumstances require immediate payment, bonding, settlement or discharge of all mechanics liens.

32. Despite demand therefore, Defendant has failed and refused to take such action, and instead has offered only to defend by means of litigating with mechanics lienors the issue of the priority of the Mortgage.

33. Such litigation would serve only to introduce further harmful delay. On information and belief, because of the failure of Defendant to record the building loan agreement such

litigation would be futile and the outcome predictably adverse to the interest of Plaintiff.

34. Additional funds cannot be advanced for completion of the Project at this time without subordination of such advances to the mechanics liens. Thus, the Project cannot be completed in fulfillment of obligations to individual lot purchasers so long as the liens remain unsatisfied.

35. In addition, because of liens, lots contracted for cannot be conveyed with marketable title to individual purchasers as required by the Offering Statement filed with the New York Secretary of State.

36. Because of the default under the Capital Loan, the filing of mechanics liens, and receipt of numerous complaints from lot purchasers, the New York Secretary of State has imposed a trust upon contract payments currently being made by lot purchasers.

37. Unless construction is promptly recommenced, the New York Secretary of State also has threatened to impose a receivership of the Project pursuant to Section 339C of the Real Property Law for purposes of protecting the interests of individual lot purchasers.

38. In the event the mechanics liens are not discharged so that construction can quickly be resumed, contract purchasers may cease making payments under their contracts with the result that the Project will become unviable as a land sales project.

39. In the event the Secretary of State imposes a receivership, years of litigation probably will ensue, which also would result in the Project's ceasing to be viable as a land sales project.

40. In either of the foregoing events the interests of Plaintiff in the Project would be irreparably damaged and down payments made by lot purchasers would be lost.

41. A declaration of this Court is necessary and desirable to determine that Defendant has a mature, present obligation under the Policy to defend the priority of the Mortgage by taking such steps as are necessary to immediately pay, settle, bond or

discharge all mechanics liens.

42. Plaintiff has no adequate remedy at law.

AS AND FOR A THIRD CLAIM FOR RELIEF

43. Plaintiff repeats and realleges paragraphs 1-26 and 28-40 as if fully set forth herein.

44. Plaintiff has requested that Defendant represent and indemnify Plaintiff in the aforesaid mechanics lien foreclosure action by defending and establishing the first priority of the Mortgage, as insured by Defendant under the Policy.

45. Under the Policy, Defendant has a duty to defend plaintiff wholeheartedly and without reservation as to its liability.

46. Defendant has refused to defend Plaintiff without reservation.

47. By reason of the foregoing, Defendant has breached its contract of insurance under the Policy.

48. A declaration of this Court is necessary and desirable to determine that Defendant has an obligation under the Policy to defend without reservation of liability the claim which has been made challenging the first priority of the Mortgage.

49. Plaintiff is without adequate remedy at law.

AS AND FOR A FOURTH CLAIM FOR RELIEF

50. Plaintiff repeats and realleges paragraphs 1-26; 28-40; and 44-47 as if they were fully set forth herein.

51. Plaintiff has offered to use its own abilities and resources to attempt to remove the mechanics liens by settling and making payment to mechanics lienors as reasonably may be necessary.

52. The Policy prevents Plaintiff from taking such action without the written consent of Defendant.

53. Defendant has refused such consent and has advised Plaintiff that the cost of any settlements made by Plaintiff shall

not be covered under the Policy.

54. For the reasons stated in Paragraphs 34-40, it is important that the mechanics liens be discharged immediately.

55. A declaration of this Court is necessary and desirable to determine that under the circumstances present Defendant is not entitled to rely upon the provisions of the Policy requiring its consent to settle with mechanics lienors, and that Plaintiff may effect such settlements as are reasonably necessary in order to permit prompt recommencement of construction and preservation of the Project for land sales purposes, without waiving any claim against Defendant under the Policy.

56. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. Declaring that Defendant negligently failed to record the building loan agreement, by reason of which Defendant is liable for all costs and expenses incurred in disposing of any mechanics liens which have been filed subsequent to the date of the Mortgage.

2. Declaring that Defendant has proceeded in bad faith as to Plaintiff by insisting upon defending the interest of Plaintiff only by litigating whether the Mortgage has priority over mechanics liens.

3. Declaring that Defendant is obligated under its contract of insurance to defend and indemnify Plaintiff without reservation.

4. Directing that Defendant immediately take all steps necessary to restore the priority of Plaintiff's first mortgage lien, including settling, discharging or bonding of existing mechanics' liens so that they are promptly cleared of record; and in the alternative, declaring that if Plaintiff undertakes to mitigate damages by settling and removing these liens without the consent of Defendant, such action will not prejudice Plaintiff's claim against Defendant in an action under its contract of insurance or be deemed a waiver of any rights thereunder.

5. Granting to Plaintiff such consequential monetary damages, irrespective of monetary limitations under the Policy, as can be established by reason of defendant's negligence, bad faith, and other conduct; and for such other and further relief as to the Court may deem just and proper, together with the costs and disbursements of this action.

TRUBIN SILLCOCKS
EDELMAN & KNAPP

BY:

A Member of the Firm
Attorneys for Plaintiff
375 Park Avenue
New York, New York 10022

LOAN AGREEMENT

THIS AGREEMENT, made this 28th day of September, 1971, by and between DIVERISIFIED MORTGAGE INVESTORS, a Massachusetts business trust, hereinafter referred to as "Lender", SLEEPY HOLLOW LAKE, INC., a New York Corporation, hereinafter referred to as the "Borrower", and UNITED STATES PROPERTIES, INC., a Delaware corporation,

WITNESSETH:

WHEREAS, the Borrower is the owner and holder of the fee simple title to property described in Exhibit "A" attached hereto and made a part hereof and hereinafter referred to as the "Security", and

WHEREAS, the Borrower has applied to Lender for a loan of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00) hereinafter referred to as the "Loan" to be advanced as hereinafter provided and to be evidenced by a Promissory Note executed and delivered of even date herewith by the Borrower in the aforesaid Loan amount for the payment of said sum or so much thereof as shall at any time be advanced thereon, payable to Lender, which Note is secured by a first lien on the Security executed and delivered of even date herewith by the Borrower, and

WHEREAS, the Borrower has represented to Lender that the Security is to be improved in the manner set forth in certain documents heretofore made available to Lender by the Borrower, and

WHEREAS, the Borrower has represented to Lender that the Loan funds are to be used solely for the purposes set out herein and for no other purpose, and

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations, it is stipulated and agreed as follows:

1. NOTE: Lender shall make to the Borrower and the Borrower shall accept from Lender a Loan in the amount of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00) which Loan shall be evidenced by the Borrower's Note and other security instruments described herein, all of which are to be simultaneously executed with this Loan Agreement. The Note shall provide for a term of FIVE (5) years with interest at the rate of TEN (10%) per cent per annum, plus additional interest as specified herein. The proceeds of the Loan shall be disbursed in the manner as set forth in paragraph 11 hereof. The Loan shall be repaid by the Borrower paying the amounts specified in Paragraph 4 for releases as well as the additional interest specified in Paragraph 7; provided that the entire loan, both principal and interest shall be paid in full FIVE (5) years from the date hereof, unless sooner paid in full as hereinafter provided.

2. SECURITY: The security for the Loan, including additional interest, shall be:

(a) A first Mortgage lien on all real property more fully set forth and described in Exhibit "A" (hereinafter referred to as the "Project"), which lien shall be subject only to the purchase money liens described in Exhibit B and to encumbrances, limitations, restrictions or easements which are approved in writing by Counsel for Lender. The property shall be free of the possibility of any mechanics' or materialmens' liens or special assessments for work completed or under construction. "Project" shall include but not be limited to the property known as Sleepy Hollow Lake, Inc.

(b) A UCC security interest lien in all vendee lot purchase contracts, notes receivable or other evidence of deferred obligations obtained hereafter by the Borrower during the term of the Loan generated from sales of real property or real property interest in the Project. Borrower hereby agrees to execute any and all documents necessary to accomplish the purposes of this paragraph.

(c) A first Mortgage lien on all real property and improvements hereafter acquired by Borrower which relate, directly or indirectly, to the Project, or which were purchased with funds derived from the Loan and/or the cash flow generated by the Project, subject only to the purchase money Mortgage. Borrower hereby agrees to execute promptly any and all documents necessary to accomplish the purposes of this paragraph.

(d) A UCC security interest lien in all personal property owned by the Borrower and used in connection with the development, maintenance, operation and sale of the Security, which interest may be subject to vendor's liens.

(e) Assignment of all water rights, easements, rebates and other sources of income from the Projects; or any rights, assets, privileges or other benefits, if any, that may, in the opinion of Lender, be necessary or valuable to the Project or its operation; provided, however, that Borrower may, prior to default, make such grants and conveyances as are necessary to develop and operate the security and that the effect of the aforesaid assignment shall be conditioned upon the default of Borrower under the Loan and the provisions hereof. Borrower hereby agrees to execute promptly any and all documents necessary to accomplish the purposes of this paragraph.

(f) It is intended hereunder that Borrower shall provide Lender with a first lien on a" real property owned by the Borrower subject to those liens and encumbrances acceptable to Lender. If for any reason the real property described under Exhibit "A" does not include all of such to execute, deliver and acknowledge all such further instruments necessary to provide Lender a first lien on such property.

3. **COMPETITIVE PROJECTS:** The Borrower agrees that it will not develop any other real property or establish any new real estate developments which are competitive with the Project, without the prior written approval of Lender.

4. **PARTIAL RELEASES:** In the event any unit, lot, tract,

parcel or other portion of the Security is sold for cash or in the event any contract, note receivable or other evidence of deferred obligation received in connection with the sale of any unit, lot, tract, parcel or other portion of the Security is paid in full or sold, assigned or transferred by Borrower to a third party for value, and provided the Loan is not in default and the payments required by this Paragraph and Paragraph 7 have been made, Lender shall release the unit, lot, tract, parcel or other portion of the Security from the operation of its Mortgage lien and, if applicable, the contract, note receivable or other evidence of deferred obligation from the operation of its UCC Security interest lien. The amount required to be paid pursuant to this Paragraph shall be that specified in the Release Schedule which is attached hereto as Exhibit "C" and made a part hereof. The payments required herein for releases shall be applied first to pay accrued interest and then to reduce the outstanding principal balance, and shall be in addition to the additional interest provided for in Paragraph 7 hereof.

5. PROJECT FINANCIAL REPORTING:

(a) MONTHLY: The Borrower shall, during the life of the Loan, provide Lender with the monthly internal financial statements involving the Project, which shall include, but not be limited to, balance sheets, profit and loss statements, estimated costs to complete, unsold lot inventories, and comparative cash flow statements and forecasts.

(b) QUARTERLY: The Borrower shall provide quarterly to Lender a narrative report of capital improvements completed in the preceding three (3) months.

(c) ANNUALLY: At the end of each fiscal year, Borrower shall provide Lender with complete financial statements audited by a CPA firm of recognized standing. Said CPA firm shall supply Lender a certificate stating if they have noted, during the course of their audit, any violation of this Loan Agreement, and if so, the exact particulars of said violation.

6. LOAN FEE AND DISCOUNT: In consideration for Lender

committing and reserving the funds to make the loan, Borrower agrees to pay Lender a Commitment Fee of ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00) which fee shall be paid out of the initial disbursement. In lieu of a higher interest rate, the Loan shall be discounted TWO HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$240,000.00) which discount shall be taken by charging the Loan at the time of initial disbursement.

7. **ADDITIONAL INTEREST:** As additional consideration for the making of the Loan, Borrower shall pay to Lender as additional interest the amounts specified in the attached Exhibit "D" for each and every lot, site and parcel sold within the Project of Sleepy Hollow Lake which property is more fully described in Exhibit "A" attached hereto. Payment of this additional interest shall be made as each lot, site or parcel is sold. Partial releases shall be conditioned upon the lot payment fee as provided hereunder and no release from the Security of Lender hereunder shall be given unless payment be made by Borrower. The obligation for lot payment fees shall be secured by the Deed of Trust on the subject security described in Exhibit "A" attached hereto. The obligation hereunder shall survive the Loan and shall be payable on all lots, sites or parcels now or hereafter sold by contract, deed or otherwise.

8. **CASH FLOW:** So long as this loan is current and not in default, Borrower will be permitted to utilize the current cash flow generated from the Project so long as the cash flow is used solely for the Project. Borrower shall report to Lender monthly on the utilization of such cash flow with satisfactory verification that the cash flow has been so used. In the event of default under the Loan, Lender shall have the right to all cash flow under the project, including payments received under any contracts, notes receivable or other evidence of deferred obligation from lot sales which have not been sold or assigned by Borrower to a third party for value.

9. **WORK AND SALES PROGRESS:** *All development or construction work contemplated hereunder shall be submitted to*

Lender for prior approval. Borrower shall proceed with all diligence to develop and construct all improvements and amenities as set forth in projections submitted to Lender in connection with the application for the Loan. Borrower is to arrange and provide for development and construction interim financing covering all and provide for development and construction interim financing covering all improvements and amenities in the Project. If at any time during the term of this Loan, Borrower has excess lot inventory, Lender in its discretion may refuse to disburse or commit any further funds under the Loan; however, the above refusal to disburse shall not be applicable to interim lenders to whom disbursement letters have been issued. Borrower shall not proceed to further develop the Project in such instance unless written approval is obtained from Lender. A satisfactory sales effort shall be maintained by Borrower through the term of the Loan. The platting of the Security into the various lots, sites and parcels shall be subject to the approval of Lender, and Lender, after said approval, shall execute such dedications, releases, etc., as are necessary to permit said platting.

10. GENERAL CONDITIONS: All contract work in excess of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) excluding professional services, shall be bonded by acceptable surety companies for completion and payment. Borrower agrees that all purchase money Mortgages on the Security shall be kept current and not in default. Borrower shall satisfy Lender that all necessary governmental permits have been obtained to permit the development, sale and operation of the project as contemplated.

11. DISBURSEMENT OF LOAN FUNDS:

(a) Upon recordation of the Deeds of Trust and all other security instrument required hereunder and delivery to the Lender of all further requirements of the Lender which are conditions precedent to the closing and disbursement of funds, and with respect to disbursement contemplated to be made subsequent to closing provided Borrower is not in default,

Lender shall disburse the Loan funds to the Borrower at such times and in such amounts as set forth in Exhibit "E". The Borrower shall, as a condition precedent to being entitled to disbursement hereunder, provide the Lender or its designee, with such proofs, certificates, release, reports, etc., as the Lender may require to establish compliance with applicable laws, rules, regulations, zoning provisions, etc. *The Lender may, at its election, disburse the funds through a title insurance agency, mortgage company or other third party to the Borrower or to the sub-contractor, materialmen and laborers directly, but such election does not prevent the Lender from making subsequent disbursements in a different manner and through a different party. Lender may, at its discretion, purchase by assignment, rather than extinguish, the purchase money mortgages referred to in Exhibits B and E, in which case Borrower shall agree to execute such modification, extensions, etc. as required by Lender to make any of said purchase money mortgages conform to this Loan Agreement.*

[b] *With each request for disbursement, Borrower shall provide Lender with a detailed schedule, acceptable to Lender, setting out the proposed distribution of funds and the purpose of each distribution. Lender shall not be required to make any disbursement subsequent to the closing of the Loan unless Lender is satisfied that the requested disbursement is in accordance with the terms and provisions of this Loan Agreement and the representations of Borrower to Lender with respect to the improvement, sale and operation of the project.*

(c) It is contemplated that one or more institutional investors will provide the interim development and construction loans to finance the various improvements to be included under the Security of Lender. such a loan or series of loans will be purchased and/or extinguished and taken out with the funds allocated hereunder and as more specifically set forth in Exhibit "E" attached hereto. Lender will upon request of said interim development and construction lenders satisfactory to Lender, issue "disbursement" letters to such lenders pursuant to the

terms and conditions of this Loan Agreement. Issuance of any disbursement letters shall be conditioned upon Borrower's prior submission to Lender of all plans and specifications for the proposed improvements, engineering cost estimates, copies of firm construction contracts, payment and performance bonds together with any other materials and data pertinent to the improvement and development construction to be financed by the development Lender. If the aforementioned items have been submitted and are found satisfactory, Lender will then issue the disbursement letter to the interim lender. In no even shall the amount of any disbursement commitment or disbursement of funds hereunder be more than the actual costs of such improvements of the specific amount allocated under this Loan, whichever is the lesser figure. At the time of disbursement of the amount necessary to extinguish the interim development loan, *Lender hereunder shall be provided, as a condition precedent to such disbursement, with evidence satisfactory to it (a) that the improvements have been completed in accordance with plans and specifications approved by Lender, (b) that all contractors and sub-contractors, laborers and materialmen have been paid, (c) of title verification and insurance to the effect that no liens or encumbrances which have not been bonded or insured against are in existence at the time of disbursement hereunder. At no time during the term of the Loan shall the aforesaid commitments plus the outstanding loan balance and reserves exceed the face amount of the Note.*

12. ASSIGNMENT OR PARTICIPATION OF LOAN: Lender reserves the right to assign the Loan or a portion thereof to, or participate with, one or more institutional investors in the Loan without first obtaining the consent or approval of the Borrower. Any such assignment or participation shall be made on a basis which will not relieve Lender of its obligations under this Loan Agreement. Lender agrees to notify the Borrower of an assignment or participation as soon as practicable. Lender represents to Borrower that it is making the Loan and obtaining the Note for investment and not with a view to, or for sale in

connection with, any public offering or distribution thereof within the meaning of the Securities Act of 1933 or other applicable securities laws.

13. SERVICING AFTER DEFAULT: Upon default hereunder Lender may at its sole option and election move the servicing of any receivables securing the Loan to a servicer of Lender's choice, and upon such election Lender shall immediately be entitled to receive all records, files, and other documents relating to such receivables. The cost of such servicing shall be at the Borrower's expense.

14. INSPECTION BY LENDER: So long as the Loan is outstanding and unpaid, Borrower shall permit any person designated by Lender in writing, on behalf of Lender, and at Lender's sole expense, to visit and discuss the affairs, finances and accounts of any thereof with the principal officers of the Borrower, all at such reasonable times and as often as Lender may reasonably request; provided that the Borrower shall not be required to reveal trade secrets or information not reasonably pertinent to the evaluation of the credit of the Borrower, the operation of the Project, or compliance with the Loan Agreement. Lender covenants that it will hold all information received from the Borrower as confidential information.

15. COVENANTS OF THE BORROWER: So long as the loan is outstanding the Borrower covenants and agrees:

(a) that it will not create, incur, assume or suffer to exist any financing except interim financing as herein contemplated exceeding TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) in any one transaction or ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in aggregate outstanding financing at any one time, whether secured or unsecured, with respect to the Project, unless the prior written consent of Lender is sought and obtained;

(b) that it will promptly pay all taxes, assessments and other charges which become due during the life of the Loan. In the event that any such tax, assessment or charge is to be contested

in good faith, such information shall be immediately communicated to Lender setting forth the specific facts and circumstances surrounding the proposed contest. Lender may, at its option and in its sole discretion, require that sufficient funds be escrowed with it to insure the payment of such taxes, assessments or charges should the contest meet with failure;

(c) that it will not sell all or a substantial portion of the Project without the prior written approval of Lender, except for the sale of lots, sites or parcels in the normal cause of business;

(d) that it will insure and keep insured itself and so much of its properties as is of the character customarily insured by companies engaged in similar business in the same area. Specifically, but not by way of limitation, every improvement on property covered by the lien of Lender shall be fully insured against loss by fire and other hazards with an insurance company acceptable to Lender and with a loss payable clause written in favor of Lender as Mortgagee. Borrower shall at all times carry full liability insurance coverage in an amount not less than Such insurance shall include but not be limited to aircraft, automobile, personal injury.

(e) that it will pay the principal of and the interest on the Loan at the time and place and in the manner set forth in the Note and the Loan Agreement:

(f) *that it will commence and continue the development, sale and operation of the project as contemplated;*

[g] that it is not now in violation of any permit or rights, easements, etc., and that it will use its best efforts to assure that it will not do nor permit anything to be done which would place said rights, permits, easements, etc., in jeopardy;

[h] that it will not distribute any assets to the stockholders by way of dividends, nor shall the Borrower increase the compensation of any officer or executive above 10% per cent per annum, without Lender's consent.

17. CORPORATE FINANCIAL REPORTS: The Borrower

covenants and agrees that so long as the Loan is outstanding, it will deliver to Lender:

(a) Within forty-five (45) days after the end of each of the first three quarters in each of its fiscal years a statement of assets and liabilities as at the end of such quarter and the related statements of income and expenses and of changes in shareholders' equity for such quarter, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by the President, Secretary, Treasurer, or an authorized financial officer of the Borrower, subject to year-end adjustments;

(b) As soon as practical and in any event within ninety (90) days after the end of each fiscal year, a statement of assets and liabilities as at the end of, and for such year, setting forth in each case in comparative form corresponding figures for the previous fiscal year all in reasonable detail and certified by CPA of recognized standing;

(c) Within forty-five (45) days after the end of each of the first three quarters and within ninety (90) days after the end of the fourth quarter in each of its fiscal years a statement in reasonable detail certified by the President, Secretary, Treasurer or an authorized financial officer (i) showing its Quarterly Net Earnings for such quarter, and (ii) certifying that there exists no condition or event which constitutes a default hereunder, or, if such default exists, specifying the nature and period of existence thereof and what action the Borrower is taking or proposes to take with respect thereto;

(d) As soon as practical and in any event within ninety (90) days after the end of each fiscal year a report signed by CPA to the effect that in making their examination of such financial statements (but without any special or additional audit procedures beyond those considered necessary to enable them to certify to such financial statements) they have (except as specified by them) obtained no notice of the existence of any condition or event which constitutes a default hereunder, or, if such accountants did become aware of any such condition or

event, specifying the nature and period of existence of any such condition or event of which they have obtained notice;

(e) Promptly upon transmission thereof, copies of all financial statements and reports sent to its shareholders and of all regular and periodic reports, if any, filed by it with the Securities and Exchange Commission (or any governmental agency succeeding to the functions of said Commission) pursuant to any Act administered by said Commission (or such agency or with the New York Stock Exchange or any other national securities exchange upon which any of the Borrower's securities shall at the time be listed and of all quarterly financial reports regularly provided by it to banks from which it borrows;

(f) Such other information and financial data, other than trade secrets, relating to the business affairs and financial condition of the Borrower as Lender may from time to time reasonably request and as is available to Borrower and reasonably pertinent to evaluation of the credit of the Borrower in compliance with this Agreement. Lender is hereby authorized to deliver a copy of any financial statements delivered to it pursuant to this Paragraph 17 to any regulatory body having jurisdiction over it.

18. SECURITY AGREEMENT:

(a) The Borrower hereby grants to the Lender as the secured party a security interest in all contracts, receivables, rights and payments of Borrower arising from the said Project, other than purchase money vendee notes secured by deeds of trust, and all equipment, supplies, material, vehicles, furniture, fixtures and livestock, and hereby assigns to the Lender all of the said receivables and payments, together with those hereafter acquired, and all right, title and interest in and to the payments due or to become due, or payments due or to become due under any sale of lots or real estate involving deferred payments, together with all rights and remedies thereunder, with power in the name of the Borrower, to take any such legal proceedings or otherwise as the Borrower might have taken save for such assignment; provided, however, that Lender's security interest in

the above shall be subject to Borrower's power to collect the receivables pursuant to Paragraph 8 hereof.

(b) The security interest created herein is given as additional security for the payment to the Lender of all indebtedness evidenced by and according to the terms of the Note, and also as security for the discharge and performance of all obligations and promises of the Borrower herein contained, together with interest thereon; and also as security for the payment by the Borrower of all sums hereafter loaned, paid out, expended or advanced by the Lender under the terms of this Agreement or otherwise, to or for the account of the Lender, together with interest thereon; and also as security for all extensions or renewals of the Note evidencing sums hereafter loaned, paid out, expended or advanced by the Lender, its successors or assigns, for the Borrower.

(c) The Borrower, at its expense, shall execute and deliver for filing all financing and other statements, and take or join with the Lender in taking any other action reasonably requested by the Lender, to perfect and continue perfecting the Lender's security interest herein.

(d) The Borrower further agrees that should it fail to make payment as provided in the Notes, or if a Default, as set forth in Paragraph 25, be made of any obligation or covenant of the Borrower herein contained, or hereby secured, or in any of the terms and conditions of the Deed of Trust, then the Lender may, at its option, sell and dispose of the Contracts and other property herein secured and assigned at public or private sale without any previous demand of performance or notice to the Borrower of any such sale whatsoever, except as provided under the Uniform Commercial Code; and from the proceeds of sale retain all costs and charges incurred by it in the taking and care, removal and sale of said property, including such attorney's fees as shall have been incurred; also all sums due it on the Note, or advanced under the terms of this Agreement, and interest thereon, or due or owing from the Borrower to the Lender under any indebtedness or obligation, with the interest thereon, and any

surplus of such proceeds remaining shall be paid by the Borrower.

(e) At any sale or sales made pursuant to this Agreement or in a suit to foreclose the same, the Contracts and other property may be sold en masse or separately, at the same or at different times, at the option of the Lender or its assigns. Such sale may be public or private, with notice as required by the Uniform Commercial Code, and the Contracts and other property need not be present at the time or place of sale. At any such sale, the Lender or the owner or owners of the indebtedness hereby secured may bid for and purchase any of the property sold, notwithstanding that such sale is irregularity in the manner of sale or of giving notice shall operate to preclude the Lender from recovering the said indebtedness.

19. REPRESENTATIONS AND WARRANTIES OF THE BORROWER:

The Borrower makes the following warranties and representations:

(a) *Correctness of Documents:* The documents submitted in connection with the Loan submission accurately set out the present intention of Borrower with respect to the projections and matters set forth in such documents.

(b) *Financial Statements and Conditions of Borrower:* The financial statements provided in support of the Loan request were prepared in accordance with good accounting practice and are correct and complete and fairly present the financial position of the person or company which each purports to reflect. The last financial positions so reflected have not suffered any material adverse changes to this date, and Borrower will not, during the life of the Loan, take any action that will intentionally materially adversely affect the financial position of Borrower and thereby the security position of Lender hereunder.

(c) *Absence of Proceedings and Actions:* There are no material actions, suits or proceedings pending, or to knowledge of the Borrower, threatened against or affecting the Borrower.

(d) *Corporate Powers and Status of Authority:* Borrower is a corporation duly organized and validly existing under the laws of the State of New York, and has all corporate powers, governmental permits, authorizations of Directors and stockholders and other such authorizations of Directors and stockholder and other such authorizations as are necessary to enable it to own and operate the Project, to carry on its business, and to carry out the terms of this Agreement, the Note and Deed of Trust. The advances and method for securing the advances herein provided for, the execution and delivery of this Agreement, the Note, and the Mortgage and other Security for the Note as herein provided are within the corporate powers of the Borrower and have been duly authorized by all necessary and proper corporate proceedings of the Borrower. This Agreement, the Note and the Mortgage have each been duly executed and delivered by the appropriate corporation constituting the Borrower and each is in full force and effect and constitutes the legal, valid and binding obligation of the party executing the respective documents.

(e) *Absence of Judgments and/or Awards and/or Orders:* There are no outstanding and unpaid judgments or arbitration awards against the Borrower. The Borrower is not in default with respect to any valid regulation, order, writ or decree of any court or governmental or municipal department, commission, board, bureau, agency or instrumentality, except as indicated on such Exhibit.

(f) *Non-Default of Borrower Contractually:* The Borrower is not in default in any material respect under any agreement or instrument to which any of them is a party or by which any of them may be bound. The execution and delivery of this Agreement, the Note and the Mortgage and the consummation of the other transactions contemplated by this Agreement do not conflict with or result in breach of any valid regulation, order, writ, injunction or decree of any court or governmental or municipal instrumentality or in the breach of or default under any indenture, contract, agreement or other instrument to which the Borrower is a party or by which it is bound. Neither the

execution and delivery of this Agreement, the Mortgage or the Note, will result in the creation or imposition of, or any cause for imposing any lien, charge or encumbrance of any nature whatsoever upon any SEcurity or assets of the Borrower other than those created, imposed or required by this Agreement or the Mortgage.

(g) *Use of Proceeds:* The proceeds of this loan will be used solely for the purposes specified herein and in the supporting documents to the request for the Loan.

(h) *Marketable Title:* Borrower has, and at all times will have, good and marketable title in fee simple to the real property constituting part of the Security. Such real property is subject to no liens, charges or encumbrances, except as set forth in Paragraphs 2(a) and (b), and as listed on Exhibit "B".

(i) *Opinion of Counsel:* To the best of the Borrower's knowledge, the matters contained in the opinion of counsel provided in Paragraph 34, are true and correct.

20. **INTEREST ON LOAN FUNDS:** Although the Note evidencing the indebtedness of the Borrower to the Lender may provide that it shall bear interest from a specific date therein, the parties hereto agree that said Note shall bear interest, which shall be payable monthly, only from the date of each advance from Lender's account at The First National Bank of Boston, Boston, Massachusetts, to Borrower and on the sum outstanding from time to time under this Loan Agreement, calculated on the daily outstanding balance computed on a 360-day year basis.

21. **SURVEY:** Prior to closing, a survey or plat map of the subject Security shall be furnished to Lender. Such survey shall be completed by a licensed surveyor or registered professional engineer and shall reflect any encroachments, easements and rights-of-way together with a certification from said surveyor or engineer as to the precise acreage contained in the Security.

22. **REMOVAL OF MECHANICS' LIENS:** The Borrower specifically agrees to have any valid mechanics' liens which may be filed against the Security released or bonded within ten (10)

days of the date Borrower receives notice of the same, time being of the essence, except that Borrower need not take any such action with respect to mechanics' liens occasioned by work performed for or at the instance of a contract vendee or sublessee.

23. **APPRAISAL:** Borrower shall furnish to Lender, within 180 days after the date hereof, an appraisal of the Security reasonably satisfactory in form and substance to Lender, made by a duly licensed appraiser satisfactory to Lender, and Borrower shall bear the expense of such appraisal.

24. **ACCESS TO BORROWER'S BOOKS AND RECORDS:** The Lender, or its agents, shall at all reasonable times, have unrestricted access to the records, accounting books, contracts, subcontracts, bills and statements of the Borrower, including any supporting or related vouchers or other instruments and shall have the right to make copies of the same. If the Lender so requires the records, books, vouchers, or other instruments shall be made available to an accountant of the Lender's choice for audit, examination, inspection and photocopying or other type of duplication, such audit to be done at Borrower's office.

25. **EVENTS OF DEFAULT:** The happening of any one or more of the following events shall constitute a default of this Loan, the Note and Mortgage.

(a) *Non-Payment of Interest:* The Borrower shall fail to make the interest payments on the due dates of within ten (10) days thereafter.

(b) *Non-Payment of Principal:* The Borrower shall fail to make any required repayment of principal, or any portion thereof, on the due date.

(c) *Breach of Condition, etc.:* The Borrower shall violate any term, condition, or representation contained in this Agreement the Note or the Mortgage which shall be continuing more than TEN (10) days after Lender has given written notice thereof to Borrower, or, if the violation is capable of being remedied within a reasonable time, but not within TEN (10) days, if action to

remedy such violation is not commenced within TEN (10) days.

(d) *Liens or Foreclosures*: The institution by a third party of foreclosure action against the Security or the filing by a third party of a valid lien against the Security which is not dismissed, bonded, insured against or removed of record, as the case may be, within TEN (10) days after Borrower receives notice of the institution of such action or such filing.

(e) *Impairment of Security*: Any condition or situation which, in the sole determination of the Lender, constitutes a danger or impairment to the Security of the Loan and such condition or situation is not remedied within TEN (10) days after written notice to the Borrower to remedy such condition or situation, or action has not been commenced to remedy such condition or situation where it is not possible to fully remedy such condition or situation within TEN (10) days. The Lender agrees that it will not exercise this right in an unreasonable manner.

(f) *Breach of Other Agreements*: If Borrower shall default in any payment of principal or interest on any other obligation for borrowed money beyond any period of grace provided with respect thereto, or shall default in the performance of any other term or condition in any such agreement, the effect of which is to cause or permit to the holder of such obligation to cause such obligation to become due prior to its stated maturity.

(g) *False Representation*: If any representation or warranty made by the Borrower herein or any writing furnished in connection with or pursuant to this Agreement shall be false in any material respect on the date such statement was made.

(h) *Bankruptcy, Insolvency, etc.*: If the Borrower shall admit in writing its inability to pay its debts or if the Borrower shall suffer a receiver or trustee to be appointed for all or substantially all of its property, and, if appointed without its consent, not be discharged within sixty (60) days; or if the Borrower shall suffer proceedings under any law relating to bankruptcy, insolvency of the reorganization or relief of debtors to be instituted by or against it, and, if contested by it, not be dismissed or stayed

within sixty (60) days; or if the Borrower shall make an assignment for the benefit of creditors or suffer any writ of attachment or execution or any similar process to be issued or levied against it or any significant part of its property which is not released, stayed bonded or vacated within a reasonable time after its issue or levy.

26. **LENDER'S REMEDIES:** Upon any default hereunder, then the Lender shall have the absolute right, at its option and election, to:

(a) *Cancellation:* Cancel this Agreement by written notice to Borrower;

(b) *Specific Performance:* Institute appropriate proceedings to specifically enforce performance hereof;

(c) *Withhold Advances:* Withhold further advances hereunder;

(d) *Taking Possession:* Take immediate possession of the Security encumbered by the Mortgage as well as all other Security to which title is held by Borrower;

(e) *Receivership:* Appoint a receiver, as a matter of strict right without regard to the solvency of Borrower, for the purpose of preserving the Security, preventing waste, and to protect all rights accruing to Lender by virtue of this Agreement and of the deed of Trust, and expressly to make any and all further improvements, whether on-site or off-site, as may be determined by Lender for the purpose of completing the development and construction in accordance with this Agreement. All expenses incurred in connection with the appointment of said receiver, or in protecting, preserving, or improving the subject Security, shall be chargeable against the Borrower and shall be enforced as a lien against the Security;

(f) *Acceleration:* Accelerate maturity of the Mortgage and Note and demand payment of the principal sums due thereunder, with interest, advances, and costs, and in default of said payment or any part thereof, to foreclose and enforce

collection of such payment by foreclosure and/or other appropriate action in any court of competent jurisdiction.

The said remedies and rights of Lender shall be cumulative and not exclusive. The Lender shall be privileged and shall have the absolute right to resort to any one or more, or all of said remedies, neither to the limited exclusion of the other. In the event of any such default under this Agreement, the Note or Mortgage by the Borrower, the Lender shall have the absolute right to refuse to disburse the balance of the Loan funds, and no other party, whether contractor, materialmen, laborer, subcontractor, or supplier, shall have the right to garnishee, require, or compel payment thereof toward discharge or satisfaction of any claim or lien which they or any of them have or may have for work performed or materials supplied to the development and/or work. Any additional funds advanced by Lender to complete development and/or construction shall be secured by the lien of said Mortgage and shall be considered a part of the Loan as though initially included therein.

27. **WAIVER OF DEFAULTS:** The waiver by the Lender of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches on the part of the Borrower.

28. **LENDER'S RIGHT TO APPEAR IN LITIGATION:** The Lender shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder and in connection therewith (except in a suit by Lender against Borrower, or the Security based upon a claim of default hereunder) to pay out of said Loan funds all necessary expenses, employ counsel and pay his reasonable fees, all of which the Borrower agrees to repay to the Lender upon demand.

29. **THIS AGREEMENT PART OF NOTE AND MORTGAGE:** The Note and the Mortgage provided for herein shall specifically incorporate this Agreement by reference and in the event that the Note and Mortgage are duly assigned, this

Agreement shall be considered assigned in like manner.

30. EXCLUSIVE BENEFITS OF AGREEMENT: This Agreement is made for the sole protection of the Borrower and Lender, their successors and assigns, and no other person shall have any right of action hereon.

31. CONDEMNATION: The Borrower, for the Borrower and the Borrower's heirs, executors, administrators, successors and assigns, does hereby assign unto the Lender, its successors and assigns, any and all awards heretofore and hereafter made by any Federal, State or municipal authorities to the present and all subsequent owners of the Security, including any award or awards for any change or changes of grade or route of streets affecting said Security, and the Lender, for itself, its successors and assigns (at its or their option) is hereby authorized, directed and empowered to collect and receive the proceeds of any such award and awards from the authorities making the same and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of the Note and Mortgage notwithstanding the fact that the account owing on account of the Note and Mortgage may not then be due and payable. The Borrower, for the Borrower and Borrower's heirs, executors, administrators, successors and assigns, hereby covenants and agrees to and with the Lender, its successors and assigns, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards to the holder of the Note and Mortgage free, clear and discharged of any and all encumbrances of any kind or nature whatsoever, except for the purchase money encumbrances set forth in Exhibit "B" and any approved interim construction loans.

32. COMPLIANCE WITH GOVERNMENTAL RESTRICTIONS: Lender and Borrower agree that they will comply with the valid requirements of various regulatory agencies having jurisdiction. The parties to this contract stipulate that the rights of buyers of land at the Project shall in no way be impaired by the Mortgage or the assignment of the security interest in the

contracts, notes receivable or other evidence of deferred obligation received because of lots sold and that unconditional release clauses, acceptable to regulatory authorities, shall be used if required by said authorities.

Lender shall be furnished as of the date of closing evidence which is satisfactory to Lender verifying that Borrower has complied with all State and Federal land sales and other applicable real estate statutes and regulations. Borrower shall provide Lender with copies of property reports and such other materials as Lender shall deem necessary to support compliance with such Federal and State provisions. Borrower shall also provide Lender with copies of lot purchase contract forms, truth-in-lending forms and materials used in connection with lot sales and lot sale financing. Borrower shall at all times during the term of this Loan be in full compliance with all of the aforesaid State and Federal land sales and truth-in-lending provisions.

Lender agrees that its lien as established under the Mortgage held by Lender hereunder shall be subordinate to the rights of any person purchasing or contracting to purchase a lot in a recorded subdivision and Lender further agrees to release any lot or lots from its lien upon payment by the lot purchasers of the purchase price required under the contract of purchase, provided Lender is paid the required release amount and additional interest.

33. RETURN OF SECURITY: Upon payment in full by Borrower of all of its obligations hereunder, Lender agrees to (i) reassign and return all of the Security and any other property then held by it as security hereunder, and (ii) sell, transfer and assign to Borrower all documents, files, records and similar material obtained by Lender from Borrower pursuant to the provisions hereof.

34. OPINION OF COUNSEL: Upon the execution of this Loan Agreement, Lender shall receive an opinion from counsel acceptable to Lender, satisfactory in form and substance to counsel for Lender, to the effect that:

(a) The Borrower is duly authorized and validly existing corporation in good standing and has all requisite power and authority to carry on the stated business of the corporation.

(b) As of the date of closing, there is no known impediment to Borrower qualifying under the Interstate Land Sales Full Disclosure Act for the Project, and where required, and to the belief of counsel as of the date of closing, all Federal and State requirements for the sale of property from the Project have been or are capable of being complied with;

(c) The Loan has been duly authorized by all necessary action on the part of the Borrower and the Loan constitutes a valid obligation of the Borrower enforceable in accordance with its terms;

(d) The Borrower will be, to the belief of counsel, the legal owner of the Security on the date of closing, and such corporation has the full right to assign or encumber the same on the basis indicated herein;

(e) The making of the Loan in accordance with the terms hereof does not constitute a violation under any existing contract or other limitation which exists with respect to the borrowing powers of the Borrower, regardless of the source of such restriction;

(f) There are no suits filed or claims made against the Borrower of a material nature that would in any way jeopardize the continuing ability of the Borrower to continue to develop and market the Project as contemplated by the projections submitted to Lender.

35. DEFINITIONS: Wherever used herein, the following words are considered in the context of these definitions:

(a) "Mortgage" or "Deed of Trust" — The Mortgage, or such other security instrument or instruments used to establish the lien upon the Projects as set forth in Paragraph 2.

(b) "Note"—The promissory note or notes or other evidence of the indebtedness created by the Loan.

(c) "Loan"—The Loan which is the subject matter of this Agreement and the other documents to which this Agreement refers.

(d) "Lender"—The named party to this Agreement, and any subsequent owner and holder of the rights and obligations established under this Agreement, the Note and Mortgage.

(e) "Borrower"—The named Borrower in this Agreement, and any successor in interest to the Borrower permitted by the Lender.

36. NOTICE TO PARTIES: All notices provided for herein shall be certified or registered mail, return receipt requested, addressed to the appropriate party at the address as the party who is to receive such notice may designate in writing. Notice shall be completed by depositing the same in a letter box or other means provided by the United States Post Office for the posting of mail addressed to the party with the proper amount of postage affixed thereto. Actual receipt of notice shall not be required to effect notice hereunder. Notices shall be given as follows:

To Lender: Diversified Mortgage Investors
 225 Franklin Street
 Boston, Massachusetts, 02110

and copy to Lender's Adviser:
 Diversified Advisers, Inc.
 P.O. Box 2195
 Coral Gables, Florida, 33134

To Borrower:
 Gerald Manning
 State Bank Building
 75 State Street
 Albany, New York 12207
 c/o Ainsworth, Sullivan, Tracy
 & Knauf, Esqs.

37. LOAN FUNDS: The Lender shall not be required to segregate the Loan funds or to earmark such funds in any manner. The sole obligation of the Lender shall be to disburse

the funds as set forth herein, provided there exists no default of this Agreement, the Note or Mortgage at the time of request for disbursement. The Lender may, at any time and at its sole option, reassign reserved funds within the categories as shown on Exhibit "E".

38. **DEFICIENCY IN FUND:** If and whenever the Lender, at its sole and absolute discretion, notifies the Borrower that the amount of funds remaining unadvanced or undisbursed in the various reserves, or any individual reserve, is less than that required to accomplish the purpose for which the reserve was established, the Borrower, out of cash flow from the Project, or elsewhere, shall deposit into the deficiency reserve an amount equal to the deficiency as determined by the Lender; failure to do so shall constitute a default.

39. **UNLIMITED ACCESS TO PROPERTY:** The Lender and its agents shall at all times during development and/or construction have the right of entry and free access to the property upon which the improvement is being made, and the right to inspect all work done, labor performed and materials furnished on or about the property.

40. **PROHIBITION ON CONVEYANCE, ASSIGNMENT OR ENCUMBRANCE:** Except for interim lenders as provided in Paragraph 11, the Borrower shall not assign this Agreement or any part of any advance to be made hereunder, nor convey or encumber the Security by mortgage or other liens, without the written consent of the Lender. Any assignments, conveyance or encumbrance without the consent of the Lender shall constitute an immediate default under this Agreement, the Note and Mortgage.

41. **NO AGENCY RELATIONSHIP:** The Borrower understands and agrees that the Lender is not the agent or representative of the Borrower, and this Agreement shall not be construed to make the Lender liable to materialmen, contractors, craftsmen, laborers or others for goods or services delivered by them upon the Projects, or for debts or claims

accruing to the said parties against the Borrower, and it is distinctly understood, and agreed that there is no contractual relation, neither express or implied, between the Lender and any materialmen, subcontractors, craftsmen, laborers, or any other person supplying any work, labor or materials in the improvement of the Security. Lender shall have no duty with respect to the development, sale or operation of the Project and assumes no responsibility or duty whatsoever for the acts or omissions of agents, employees or contractors engaged or employed by Borrower in the development, sale and operation of the Project.

42. MISCELLANEOUS PROVISIONS: All inspections and other services rendered by the Lender or its agent, whether or not paid for by the Borrower or its successors in title, shall be rendered solely for the protection and the benefit of the Lender, and the Borrower shall not be entitled to claim any loss or damage against the Lender or its agents or employees for failure to properly discharge their duties to the Lender, provided, however, that this shall not be construed to relieve Lender from liability for any breach of the terms of this Agreement.

This Agreement, the Note and Mortgage are executed and delivered in the State of Massachusetts and the law in the State of Massachusetts shall govern in the interpretation, enforcement, and all other aspects of the obligation and duties created under this Loan. It is understood and agreed that all parties to this Agreement and the Note and Mortgage hereby consent that, from time to time, upon the agreement of the parties involved, the Note may be extended or renewed in whole or in part or the rate of interest thereon may be changed or fees in consideration of loan extensions may be imposed, and any related right or security therefore may be waived, exchanged, surrendered or otherwise dealt with and any of the acts mentioned in the Note may be done, all without affecting the liability of the Borrower. The release of any party liable upon or in respect of the Note shall not release any other party. The Borrower, and each of them, hereby waives presentment,

demand of payment, protest and notice of non-payment and of protest and any and all other notices and demand whatsoever.

Nothing contained in this Agreement, the Note and Mortgage shall impose upon the Lender any obligation to see to the proper application of advances under this Loan. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties hereto.

All covenants, agreement, representations and warranties made herein and in documents delivered in support of the Loan request shall be deemed to have been material and relied on by the Lender and shall survive the execution and delivery to the Lender of the Note and disbursement hereunder.

All sections and descriptive headings are inserted for convenience only, and shall not affect any construction or interpretation hereof.

Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement.

The Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

(f) "Security"—The real property and the contract rights described in Exhibit "A".

43. TITLE INSURANCE: The Borrower shall provide, at its own expense, title insurance for the loan amount in the standard ALTA form issued by a title insurance company acceptable to the Lender. The title policy is to be issued, without exceptions, except such as is acceptable to counsel for the Lender, insuring the Lender's mortgage as a valid lien upon the Security and insuring against loss or change in priority as a result of filing of any lien or special assessment for material or work under construction or completed. As the principal balance of the Loan is increased, the title insurance policy shall be endorsed without additional exceptions to reflect the new loan balance. Funds to

pay additional premiums shall be reserved.

44. **CLOSING COSTS:** All expenses incurred in connection with the closing of this Loan, except the expenses of Lender's adviser, shall be paid by Borrower. Borrower shall pay to Lender a \$25,000.00 documentation fee, to cover expenses of DMI's counsel.

45. **GUARANTY:** United States Properties, Inc., a Delaware corporation shall unconditionally guarantee the performance of Borrower hereunder.

46. **AFTER ACQUIRED PROPERTY:** Borrower shall promptly notify Lender of the acquisition of any property acquired after the date of this Agreement and shall provide, at its cost, the necessary documentation as determined by Lender to encumber the property as provided herein for the repayment of this Loan.

47. **BROKER'S DISCLOSURE:** Lender shall be furnished with full disclosure of all fees or other compensation paid or to be paid to any brokers or realtors in connection with the acquisition of this property or this financing, including any "finders fees". In addition, Borrower shall indemnify the Lender from any and all claims for any of such fees or other compensation.

48. **STOCK OPTION:** Borrower shall grant to Lender an option to acquire non-dilutable non-voting stock representing Twenty-Five (25%) per cent of the ownership of United States Properties, Inc., for a total consideration of \$25,000.00. The form and structure of said option shall be as determined by Lender and Borrower and Borrower agrees to execute and deliver such documents to accomplish same as requested by Lender.

49. **CONTRACT FINANCING:** It is anticipated that Lender, either a part of this Loan or as a separate agreement between Borrower and Lender, may finance some of the contracts, notes receivable or other evidence of deferred obligations received in connection with the sale of units, lots, tracts, parcels of other portions of the Security, in which case full recourse shall be had by Lender against Borrower in case of default by the purchaser.

In addition, Borrower's obligation to continue the development, sale and operation of the project as contemplated shall continue until all the contracts, notes receivable or other evidences or deferred obligations have been fully paid. The obligations of the purchaser contained in the contract, notes receivable or other evidence of deferred obligation and the obligations of the Borrower contained herein, shall be secured by the Mortgage referred to in Paragraph 2 hereof.

The name DIVERSIFIED MORTGAGE INVESTORS, is the designation of the Trustees for the time being under a Declaration of Trust dated July 15, 1969, as amended, and all persons dealing with DIVERSIFIED MORTGAGE INVESTORS must look solely to the Trust property for the enforcement of any claims against DIVERSIFIED MORTGAGE INVESTORS as neither the Trustees, officers, agents or shareholders assume any personal liability for obligations entered into on behalf of DIVERSIFIED MORTGAGE INVESTORS.

IN WITNESS WHEREOF, the parties have set their hands and seals this 28th day of September, 1971.

Signed, sealed and delivered
in the presence of:

DIVERSIFIED MORTGAGE INVESTORS
a Massachusetts business trust

By s/ H. Wallace
Trustee

BR

SLEEPY HOLLOW LAKE, INC.,
A New York corporation

By s/ Steven K. Fair
Steven K. Fair
Executive Vice-President

UNITED STATES PROPERTIES, INC.
A Delaware corporation

By: s/ Thomas A. Perine
Thomas A. Perine
President

**EXHIBIT A TO LOAN AGREEMENT BETWEEN
DIVERSIFIED MORTGAGE INVESTORS AND SLEEPY
HOLLOW LAKE INC.—LEGAL DESCRIPTION OF REAL
PROPERTY.**

A tract or parcel of land containing approximately 1904 acres located in Greene County, New York described in 5 parcels as follows:

**EXHIBIT C TO LOAN AGREEMENT BETWEEN DIVER-
SIFIED MORTGAGE INVESTORS AND SLEEPY HOLLOW
LAKE, INC.—RELEASE SCHEDULE**

Lender shall release from the operation of its lien any lot listed below upon the payment to Lender of an amount equal to the greater of (1) 54% of the sales price received by Borrower or (2)

- (a) \$7,560.00 for each Waterfront Lot
- (b) \$5,400.00 for each Second Tier (view) Lot
- (c) \$4,050.00 for each Offshore Lot
- (d) \$16,200.00 for each Multi-family Lot (3 acres or less)

to be released; PLUS the additional interest as provided for in Paragraph 7 and Exhibit "D" hereof.

Releases of property, other than in the above categories, shall be as determined by Lender, consistent with the above values.

INITIALLED FOR IDENTIFICATION:

**EXHIBIT D TO LOAN AGREEMENT BETWEEN
DIVERSIFIED MORTGAGE INVESTORS AND SLEEPY
HOLLOW LAKE, INC. — ADDITIONAL INTEREST**

Borrower shall pay to Lender, as additional interest, the amounts specified below for the respective lots listed below:

- (1) Waterfront Lots\$700.00 per lot
- (2) Second Tier (view) Lots\$500.00 per lot
- (3) Offshore Lots\$375.00 per lot
- (4) Multi-family Lots (3 acres or less) . \$1,500.00 per lot

In the event that there is a sale of any real property which does not fall within any of the above listed categories, then Borrower shall pay to Lender as additional interest a sum as determined by Lender consistent with the above values.

INITIALED FOR IDENTIFICATION:

EXHIBIT E TO LOAN AGREEMENT BETWEEN DIVER-
SIFIED MORTGAGE INVESTORS AND SLEEPY HOLLOW
LAKE, INC.—DISBURSEMENT SCHEDULE

Sleepy Hollow Lake, Inc.
PARTY OF RECORD

	CASHING	RECEIVED	TOTAL
INIT. FUND & DISCOUNT	3860.00	--	3860.00
LOANS	175827776	1144750	287325276
ORIGINAL COST	6943124	--	6943124
TITLE & FILING	6744171	1361770	10355941
RECORD	--	15000	15000
COMMISSION	82540	--	82540
CREDIT ADV. ADMIN.	175542	125000	300542
COPIES OF REPORT	69523	363649	433172
CARDPAYS	--	227000	227000
COPIES OF DOCUMENTS	--	1234151	1234151
STAMP & FILING	--	167500	167500
INSURANCE	--	675000	675000
MAINT. & REPAIRS	--	1252113	1252113
REPAIRS & MAINT.	--	1450000	1450000
REPAIRS & MAINT.	--	412337	412337
CONTRACTS & NOTES	--	7596499	7596499
STAMP & FILING	--	250000	250000
INVESTMENT RESERVE	--	921930	921930
TOTAL	203166271	93133917	296299188

The above disbursement allocations may be varied by the Lender at its discretion so as to reallocate funds under such categories or to establish new allocations not specifically provided herein upon the request of the Borrower.

INSET
B

Sweeney Hollow Lake,
Hudson River Watershed
CLOSING

OFF. FUEL & OILS			385000
LAND - SULLIVAN	175513191		
DRG. STAFFS	354675		
			1758677.6
OFFICE COST			
Sweeney Hollow Lake Inc			6942121
TITLE & FILING FEES			
N.Y. STATE INQ. TAX	65739		
INTER. CO. TITLE	1159230		
TRANSFER TAX	332732		
ACQUISITION FEES & MISC.	6000		
R/F TAXES	437003		
			1994771
CONSTRUCTION			
ADVISORY			88222
GENERAL ADMIN.			
Sweeney Hollow Lake, Inc.			
ENVIRON. STUDY	1222		
ACQUISITION COST	33177		
LEGAL	750		
ADMINISTR.	2500		
EIP	101000		
		138663	
ENVIRONMENT ONE		24000	
JOHN JOHNSON		411	
CHARLES VINCENT		500	
ADVISORY, SULLIVAN CTR		6197	
JOHN COTTON		2015	
			175542
ENV. MONITORING			
Sweeney Hollow Lake, Inc.			
HYDROLOGY	5201		
DRY	3043		
SAND & WATER	12404		
		21507	
PLANNING & OPERATIONS		8674	
LAND & WILDERNESS		4000	
ED STONE		2744	
PLANNING, INC.		1000	
WATER & EIP		1332	
STUDY & DESIGN		28462	
ENV. & LAND MONITORING		448	
LAND & WILDERNESS		1450	
			19515
WATER CLOSING			
			26361017

City of Detroit, Mich.

MANAGEMENT ACCOUNTS

REVENUE

LAND				
Taxes			1,147,150	
License			13,619.70	
Engineering			15,000	
Grading		40,000		
Excavating & Trenching		67,000		
Drain		40,000		
Plan & Design Fees		46,000		
Survey		35,000		
Planning		105,000		
Roads & Drainage		50,000		
Cleanliness			363,649	
Land		105,000		
Land		60,000		
Road & Drainage			227,000	
Survey & Planning			133,415.7	
Drain			187,500	
Land & Survey			875,000	
Drainage				
Drainage		88,113		
Drainage		200,000		
Drainage		16,000		
Drainage			1,053,113	
Drainage				
Drainage		135,000		
Drainage		200,000		
Drainage			1,450,000	
Drainage				
Drainage		125,000		
Drainage		100,000		
Drainage		40,000		
Drainage		35,000		
Drainage		40,000		
Drainage		45,000		
Drainage		40,000		
Drainage		40,000		
Drainage			468,000	
Drainage			75,619.57	
Drainage			200,000	
Drainage			927,950	
Drainage			125,000	
Drainage			930,950	

**ADDENDUM TO LOAN AGREEMENT BETWEEN
DIVERSIFIED MORTGAGE INVESTORS AND SLEEPY
HOLLOW LAKE, INC.**

This is an addendum to that one certain Loan Agreement of even date herewith between Diversified Mortgage Investors, a Massachusetts business trust, as Lender, and Sleepy Hollow Lake, Inc., a New York Corporation, as Borrower, which addendum, when executed shall become and be a sort of said Loan Agreement as fully and completely or thought set out therein:

WITNESSETH:

The following paragraphs shall be added to the above referred to Loan Agreement:

50. **PERSONAL GUARANTEE** Thomas A. Perine shall unconditionally guarantee the loan obligation of the Borrower, to the extent of One Million and No/100 (\$1,000,000.00) Dollars.

51. **ASSIGNMENT OF STOCK:** An additional security, United States Properties, inc. shall collaterally assign to Lender all of the issued and outstanding capital stock of Borrower.

Dated this 28th day of September, 1971

UNITED STATES PROPERTIES, INC.

BY s/ Thomas A. Perine

Thomas A. Perine

DIVERSIFIED MORTGAGE INVESTORS

By s/ H. Wallace JSR

Trustee

s/ Thomas A. Perine

Thomas A. Perine, Individually

SLEEPY HOLLOW LAKE, INC.

By s/ Steven K. Fair

Steven K. Fair, Executive

Vice President

The named Diversified Mortgage Investors is the designation of the Trustees for the time being under a Declaration of Trust dated July 14, 1969, as amended, and all persons dealing with Diversified Mortgage Investors must look solely to the trust property for the enlistment of any claims against Investors

Mortgage Investors as neither the Trustees, officers, agents or shareholders assume any personal liability or obligation entered into on behalf of Diversified Mortgage Investors.

MODIFICATION OF LOAN AGREEMENT

THIS MODIFICATION OF LOAN AGREEMENT, made on January 10, 1972, by and between SLEEPY HOLLOW LAKE, INC., a New York Corporation, whose address is P.O. Box 50086, Indianapolis, Indiana 46250, hereinafter referred to as the "Borrower", and DIVERSIFIED MORTGAGE INVESTORS, a Massachusetts Business Trust, whose address is 100 Federal Street, Boston, Massachusetts 02110, hereinafter referred to as the "Lender",

WITNESSETH:

WHEREAS, Borrower and Lender entered into a certain Loan Agreement dated September 28, 1971, for a loan in the amount of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00), and

WHEREAS, the Borrower and CONTINENTAL MORTGAGE INVESTORS, a Massachusetts Business Trust, hereinafter referred to as "CMI" have entered into a certain Loan Agreement of even date for a loan in the amount of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,750,000.00), said Loan Agreement is attached hereto as Exhibit "A" and made a part hereof by reference, which Loan Agreement provides for certain development and improvement of the project described therein with the proceeds of the Loan described therein, and

WHEREAS, the Lender and CMI have entered an Agreement wherein the Lender agreed to sell CMI an interest in its Loan to the Borrower.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed as follows:

The above referenced Loan Agreement described in Exhibit "A" between the Borrower and CMI is incorporated into the Loan Agreement between the Borrower and the Lender.

The Lender has agreed to the subject Modification contingent upon securing an endorsement to the Title Policy insuring the subject loan to the effect that the Modification to the Lender's Loan Agreement does not effect the priority of the Lender's lien.

The name DIVERSIFIED MORTGAGE INVESTORS is the designation of the Trustees for the time being under a Declaration of Trust dated July 15, 1969, as amended, and all persons dealing with DIVERSIFIED MORTGAGE INVESTORS must look solely to the Trust property for the enforcement of any claims against DIVERSIFIED MORTGAGE INVESTORS as neither the Trustees, officers, agents or shareholders assume any personal liability for obligations entered into on behalf of DIVERSIFIED MORTGAGE INVESTORS.

BORROWER: SLEEPY HOLLOW LAKE, INC.,
a New York Corporation

By: s/ Steven K. Fair
Vice President

LENDER: DIVERSIFIED MORTGAGE INVESTORS,
a Massachusetts Business Trust

By: s/ Vincent P. Weber
Vincent P. Weber, Assistant Secretary

LOAN AGREEMENT

THIS AGREEMENT, made on January 10, 1972, by and between SLEEPY HOLLOW LAKE, INC., a New York Corporation, whose address is P.O. Box 50086, Indianapolis, Indiana 46250, hereinafter referred to as the "Borrower", and CONTINENTAL MORTGAGE INVESTORS, a Massachusetts Business Trust, whose address is 100 Federal Street, Boston, Massachusetts 02110, hereinafter referred to as the "Lender",

WITNESSETH:

WHEREAS, the Borrower has applied to the Lender for a loan of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,750,000.00) hereinafter referred to as the "Loan", for a term ending April 1, 1973, at an interest rate hereinafter specified on the daily outstanding balance, and

WHEREAS, the Borrower and Diversified Mortgage Investors, a Massachusetts Business Trust, hereinafter referred to as "DMI", have entered into a certain Loan Agreement dated September 28, 1971, for a loan in the amount of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00); said loan being secured by a Promissory Note in the above referenced amount and a Mortgage on certain real property, hereinafter referred to as the "Security", which is described in Exhibit "A" attached to and made a part hereof by reference, and

WHEREAS, the Borrower has represented to the Lender that the Security is to be improved in the manner set forth in certain documents heretofore made available to the Lender by the Borrower, and

WHEREAS, the Borrower has represented to the Lender that the Loan funds are to be used solely for the purposes set forth herein and for no other purpose.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, it is stipulated as follows:

1. **SECURITY INSTRUMENTS:** In lieu of the Borrower executing a Note, Mortgage and other documents relating to the loan for THREE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$3,750,000.00) the Borrower has contemporaneously with the execution of this Agreement executed a Modification to the aforesaid Diversified Mortgage Investors Loan Agreement encompassing the terms of the Lender's development loan. Contemporaneously with the execution of the subject Agreement, the Lender has entered an Agreement with EMI wherein DMI has agreed to sell the Lender a participation in its loan.

2. **TERM AND INTEREST RATE:** The Lender shall make to the Borrower and the Borrower shall accept from the Lender a Loan in the amount of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,750,000.00) for a term ending April 1, 1973. The interest rate payable hereunder shall be variable and adjusted from time to time so as to provide an interest rate equal to four and one-half per cent (4.5%) per annum above the prime rate of interest established by the Chemical Bank of New York, New York. Any such change in the aforementioned interest rate shall be automatic on the first day following the announced change in the prime rate by Chemical Bank of New York; provided, however, that in no event shall the interest rate payable hereunder be less than ten per cent (10%) per annum. Said interest is computed on the daily outstanding balance on a 360-day year basis, being payable on the first day of February, 1972, and the first day of each month thereafter until the principal and interest due hereunder are fully paid.

3. **PURPOSE:** The purpose of this Loan is for financing the development of a recreational homesite project on the real property described in Exhibit "A" attached hereto and made a part hereof.

4. **CLOSING REQUIREMENTS:** Contemporaneously with the execution of the subject Agreement, the Borrower and DMI are to execute a Modification Agreement to the above referenced

DMI Loan Agreement; and, the Lender and DMI are to execute an Agreement wherein DMI agrees to sell the Lender an interest in its Loan to the Borrower.

5. *LIMITATION ON FUNDING*: The maximum amount of funds that are to be disbursed under the subject loan is limited to FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) until the subject project has been approved by the applicable agency for the State of New York. After the Lender has received satisfactory evidence that said agency has approved the project, the disbursements will be made as indicated in Exhibit "B".

6. *APPROVAL OF CONTRACTS*: Prior to the funding for each specific phase of the development of the subject project, the Lender is to approve all the firm executed contracts for that particular phase.

7. *DISBURSEMENT OF LOAN FUNDS*: Upon the execution by the applicable parties of the subject Loan Agreement, the Modification to the September 28, 1971 DMI Loan Agreement, and the Agreement between the Lender and DMI and delivery to the Lender of all items required and specified by the Lender, the Lender shall disburse the Loan funds to the Borrower in accordance with the schedule entitled "Use of Funds" contained in Exhibit "B" which is attached hereto.

The Borrower shall, as a condition precedent to being entitled to disbursement hereunder, provide the Lender, or its designee, with Certificates and Requests for Payment in the form attached hereto as Exhibit "B-1", certifying as to the stage to which construction has progressed, and stating that all such work has been done and materials installed in full compliance with the plans and specifications. Such requests shall be accompanied by:

- (a) Proofs as to paid and unpaid construction bills for materialmen and subcontractors, which show full payment (except for hold backs) of all such bills then due and payable except those covered under the current Request;

(b) Lien waivers for all work and materials as required by the title insurance company for the issuance of its endorsement except that covered by the current Request;

(c) Inspection reports, architects and/or engineers certificates re: onsite and offsite improvements, and such other proofs as the Lender may require to establish the development and/or construction progress;

(d) Initial sworn statements or affidavits of the general contractor or contractors, and of any subcontractors or materialmen as to whom payments are due or will become due, covering all work done or to be done or services to be performed, together with waivers of lien covering all work, material and services for which payments have been made prior to the opening of the Loan to the extent required by the title company in order to obtain the lien protection; and

(e) The current status of accounts of contractors, subcontractors, materialmen, and laborers furnishing labor, materials or services in the improvement of the Security.

Borrower, or title company, where title company is the disbursing agent, shall utilize all portions of the Mechanic's Lien Law which will shorten the time in which such liens can be filed, and shall comply with all applicable laws, as the basis for requested disbursements.

Borrower shall procure and maintain in force an insurance policy, with premiums prepaid, with such company, and in such form and amount, and with such coverage and for such terms, as may be satisfactory to the Lender, insuring any improvements on the said property against loss or damage by fire or other casualty, and with extended coverage for such other hazards as may reasonably be required by the Lender to be insured. Said policy shall contain a Mortgagee's "Loss Payable" Clause providing for payment to the Lender to the extent of its interest

in the event of loss. Said policy may, during construction, be in "Builder's Risk" form so far as the same relates to the improvements erected or to be erected on said premises. In the event said policy is cancelled, Borrower shall notify Lender in writing within five (5) days of receipt of notice of such cancellation, and shall advise insurer to forward any and all refund resulting from such cancellation to Lender.

The Lender shall not be obligated to make disbursements hereunder until the Borrower delivers to the Lender the required requisitions and other proofs. Tendered requisitions and other proofs shall be deemed acceptable unless within seven (7) days after delivery Lender notifies Borrower of the particulars in which they are deficient after demand for such notification by Borrower.

The Lender may, at its election and at the Borrower's cost, disburse the funds through a title insurance company, mortgage company, or other third party, to the Borrower, or to the subcontractors, materialmen and laborers directly, but except as required by agreements with the title insurance company, such election does not prevent the Lender from making subsequent disbursements in a different manner and through a different party.

A request for Loan or advance hereunder shall be submitted to the Lender on the form specified in Exhibit "B-1" and each such request shall be submitted in sufficient time prior to Borrower's requested date for a Loan or advance hereunder in order to enable Lender to process such request. Funds shall be characterized as disbursed to the Borrower when disbursed by the Lender's bank, irrespective of instructions by the Borrower to disburse to another entity.

Lender may deduct from any disbursements the amount of any retainage, fees, expenses, reserves, advances or deposits specified in Exhibit "B". The Borrower shall advance in cash any sums not provided in said Exhibit to pay premiums on casualty and title insurance, taxes, assessments, recording expenses, filing fees, or such other sums as Lender may deem

necessary for the protection and preservation of the Security, and payment of premiums for insurance required by the Lender during the life of this Loan. In the event Borrower does not make timely payment of any of the aforesaid sums, Lender is hereby authorized, if Lender so elects, to advance any sums necessary to make such payments at Borrower's expense out of loan proceeds.

8. DEVELOPMENT WORK:

a. Development Work Criteria:

The development of the subject property shall be in accordance with the proposed plans submitted as the basis for this Loan and in compliance with all restrictions, conditions, ordinances, codes, regulations and laws of governmental departments and agencies having direction or jurisdiction over, or an interest in, said premises and improvements. No extra work nor change in plans and specifications shall be authorized by the Borrower without the written consent of the Lender. If the Lender shall consent to any such extra work or change in plans and specifications, the Borrower shall immediately deposit the amount of the cost thereof with the Lender, or title insurance company, where the latter is the disbursing agent, such deposit to be disbursed by the Lender or title company upon completion of such extras or changes.

b. Commencement and Continuity of Work:

Development of the property shall commence within thirty (30) days from the date of this Agreement and shall be carried on diligently and with dispatch until completed, and the Borrower will devote its full effort and energy to the development, construction and completion of the Security.

c. Progress Reports:

Upon request by the Lender, the Borrower shall deliver to the Lender a report indicating the stage of completion of the contemplated improvements to the Security, the

costs of said improvements compared to estimates and/or contracts, and any other data and information concerning the Security, all of which shall be required by Lender on a monthly basis unless circumstances dictate more frequent reports.

d. *Construction Costs:*

No development work may commence or continue under this Loan until or unless (1) Engineering cost estimates have been provided to the Lender and such cost estimates have been reviewed and found acceptable by the Lender and (2) Firm construction contracts have been let for the development work to be performed and such contracts are in an amount which does not exceed the cost estimates furnished.

9. *INCORPORATION OF TERMS OF DMI'S LOAN:* The above referenced Loan Agreement between the Borrower and DMI is incorporated herein and made a part hereof as though fully set out herein in its entirety.

The name CONTINENTAL MORTGAGE INVESTORS is the designation of the Trustees for the time being under a Declaration of Trust dated November 29, 1961, as amended, and all persons dealing with CONTINENTAL MORTGAGE INVESTORS must look solely to the Trust property for the enforcement of any claims against CONTINENTAL MORTGAGE INVESTORS as neither the Trustees, officers, agents, nor shareholders assume any personal liability for obligations entered into on behalf of CONTINENTAL MORTGAGE INVESTORS.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

BORROWER: SLEEPY HOLLOW LAKE, INC.,
a New York Corporation

By: s/ Steven K. Farr
Vice President

LENDER:
VESTORS,

CONTINENTAL MORTGAGE IN-

a Massachusetts Business Trust

By: s/ L.H. Johnson

L.H. Johnson,

Assistant Secretary

EXHIBIT "A"

TO LOAN AGREEMENT dated January 10, 1972 by and between SLEEPY HOLLOW LAKE, INC., a New York Corporation, and CONTINENTAL MORTGAGE INVESTORS, a Massachusetts Business Trust.

The following is the legal description of the Security:

LEGAL DESCRIPTION OF REAL PROPERTY

A tract or parcel of land containing approximately 1904 acres located in Greene County, New York described in 5 parcels as follows:

EXHIBIT "B"

TO LOAN AGREEMENT dated January 10, 1972 by and between SLEEPY HOLLOW LAKE, INC., a New York Corporation, and CONTINENTAL MORTGAGE INVESTORS, a Massachusetts Business Trust.

As a condition precedent to the disbursement of loan proceeds (after the initial recording draw for purposes other than construction), the Borrower shall supply to the Lender executed subcontracts from:

- (a) Each and every subcontractor and material supplier whose individual bid represents 10% or more of the total construction costs, and
- (2) A sufficient number of subcontractors and material suppliers whose bids collectively represent no less than 70% of the total costs of construction.

Lender may, at its election, require that Borrower furnish, in addition to the foregoing, executed construction contracts between the Borrower and all contractors, executed copies of all subcontracts between the general contractor or contractors and all of their subcontractors and suppliers including contracts, subcontracts and purchase orders for all fixtures and equipment required to be installed for the operation of the premises. The aforementioned contracting parties must be acceptable to Lender. The Lender may require executed copies of firm bids or estimates of costs from any or all of the contractors and subcontractors.

The amounts called for under any of the aforesaid contracts shall not be in excess of the total amount allocated for that purpose in the schedule entitled "Use of Funds" contained in this Exhibit.

Lender, at its election, may verify the correctness of the amount of any contract, subcontract, estimate or bid furnished pursuant to the terms hereof.

USE OF FUNDS

Subject to the provisions herein set forth, Loan funds contemplated in this Agreement have been allocated as follows and shall only be disbursed in accordance therewith:

Clearing Lots & Lake	\$ 185,000.00
Storm Drain System & Roads	600,000.00
Sanitary Sewer	700,000.00
Water System	685,000.00
Parks, Campgrounds & Beaches	10,000.00
Reserve for Contingencies (Devel.)	313,750.00
Special Works—Dam	875,000.00
Reserve for Construction	310,000.00
Reserve for Contingencies (Const.)	50,000.00
Title Insurance & Recording	10,000.00
Lender's Attorney's Fee	<u>11,250.00</u>
TOTAL LOAN	\$3,750,000.00

METHOD AND PROCEDURE FOR DISBURSEMENT

All requests for disbursement hereunder shall be submitted on forms identical to Exhibit "B-1" attached hereto and said form is to be appropriately completed, executed, and where indicated, certified, as a condition precedent to wiring by Lender of funds.

Requests for disbursement shall only be made upon certification by an engineer who is acceptable to Lender that the condition of construction and/or development is in accordance with the previously submitted plans and specifications and all certifications to the date of construction and/or development, that the funds requested represent payment only for work completed, and that there are sufficient funds remaining under the Loan program to complete the construction and/or development proposed under the Loan program on the subject Security. In addition, prior to each disbursement, an endorsement must be issued to the existing title insurance policy by title company satisfactory to Lender after it has examined title.

and said endorsement shall indicate that there are no liens filed of record on the property which is the security for the Loan and said endorsement must meet with the satisfaction of the Lender, in its sole and absolute discretion. Any funds to be disbursed hereunder shall be disbursed to the Borrower.

Notwithstanding any provisions to the contrary contained in the Article on "Disbursements" of the Loan Agreement, it is agreed between the parties that the terms of this Exhibit shall govern with respect to conditions precedent to any disbursement under the subject Loan in the event of any conflict or ambiguity between the terms of this Exhibit and said Article.

EXHIBIT "B-1"

CERTIFICATE AND REQUEST FOR PAYMENT
DEVELOPMENT LOANNAME OF BORROWER: SLEEPY HOLLOW LAKE, INC.
MORTGAGE NO.: REQUEST NO.

RE:

Date:

The undersigned hereby certifies, pursuant to the terms of the subject loan herein above referred to, that: (1) The estimated cost for the total improvements is \$ _____; (2) Certain items comprising such cost of development as show in previous certifications which are herein incorporated and made a part hereof, amounted to \$ _____; (3) Additional items comprising cost of development subsequent to the last previous certification, Request No. _____ in the amount of \$ _____ are shown below:

Item No.	Item	(1) CMI Loan Budget	(2) Contract Amount	(3) Total Funds Committed	(4) Funds Remaining Available	(5) Percent Complete	(6) Previous Pmts. Less Retainage	(7) Retainage Withheld This Request	(8) Pmts. Now Req. Less Retainage	(9) Accumulated Retainage To Be Paid
1	Clearing Lots & Lake	182,000								
2	Storm Drain Sys. & Roads	600,000								
3	Sanitary Sewer	700,000								
4	Water System	622,000								
5	Electric & Communications - Roads	12,000								
6	Electric & Communications - D	113,750								
7	Special Horse - Dam	875,000								
8	Grading for Construction	310,000								
9	Plans for Contingencies - C	50,000								
10	Maps and Recordings	10,000								
11	Developer's Insurance Fee	11,250								
Totals		3,750,000								

SUBMITTED BY

d

ENGINEER'S APPROVAL

I, _____ do hereby certify that the improvements as herein above referred to, are true and correct and that the balance of the development funds, after making the requested disbursement is sufficient to complete the improvements.

Date

Signed

Civil Eng. No. _____

TITLE (C):

The undersigned hereby certifies that as of this date, there are no liens or other claims filed of record against the property encumbered by the subject loan.

Date

Signed

Pm5E:



CERTIFICATE AND REQUEST FOR PAYMENT

DEVELOPMENT LOAN

NAME OF BORROWER: SLEEPY HOLLOW LAKE, INC.

MORTGAGE NO.:

REQUEST NO.

RE:

The undersigned hereby certifies, pursuant to the terms of the subject loan herein above referred to, that: (1) The estimated cost for the total improvements is \$ _____; (2) Certain items comprising such cost of development as show in previous certifications which are herein incorporated and made a part hereof, amounted to \$ _____; (3) Additional items comprising cost of development subsequent to the last previous certification, Request No. _____ in the amount of \$ _____ are shown below:

Item No.	(1) CHI Loan Budget	(2) Contract Amount	(3) Total Funds Committed	(4) Funds Remaining Available	(5) Percent Complete	(6) Previous Pmts. Less Retainage	(7) Retainage Withheld This Request	(8) Pmts. Now Req. Less Retainage	(9) Accumulated Retainage To Be Held
1	Clearing Lots & Lake	185,000							
2	Storm Drain Sys. & Roads	600,000							
3	Sanitary Sewer	200,000							
4	Water System	685,000							
5	Paths, Campgrounds & Beaches	10,000							
6	Reserve for Contingencies- D	313,750							
7	Special Works - Dam	875,000							
8	Reserve for Construction	310,000							
9	Reserve for Contingencies- C	50,000							
10	Ins. & Recording	10,000							
11	Attorney's Fee	11,250							
12									
13									
14									
15									
16									
17									
18									
19									
20									
Totals	3,750,000							21,787	

SUBMITTED BY

ENGINEER'S APPROVAL

I, _____ do hereby certify that the improvements as herein above referred to, are true and correct and that the balance of the development fund is sufficient for making the requested disbursement is sufficient to complete the improvements.

Date

Signed

CIVIL

TITLE CO.

The undersigned hereby certifies that as of this date, there are no liens or other claims filed of record against the property encumbered by the subject loan.

Date

Signed

STATE OF NEW YORK)
) SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of Sept. 1975 deponent served the within *Appendix* upon *PAUL E. Roberts* c/o *Trubin, Sillocks*

attorney(s) for *Appellee*

in this action, at *375 Park Ave*
NYC

the address(es) designated by said attorney(s) for that purpose by depositing & true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey

ROBERT BAILEY

Sworn to before me, this
9 day of Sept. 1975.

William Bailey
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132943

Qualified in Richmond County
Commission Expires March 30, 1976